UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsel
Division No. 86–6

FINAL REPORT OF THE INDEPENDENT COUNSEL FOR IRAN/CONTRA MATTERS

Volume II:
Indictments, Plea Agreements, Interim Reports to the Congress, and Administrative Matters

LAWRENCE E. WALSH
Independent Counsel

August 4, 1993
Washington, D.C.

REPORTS OF INDEPENDENT COUNSEL

On August 5, 1993, the Office of Independent Counsel for Iran/contra Matters submitted a three-volume report to the United States Court of Appeals for the District of Columbia Circuit, Division for the Purpose of Appointing Independent Counsel:

1. Volume I: Investigations and Prosecutions
2. Volume II: Indictments, Plea Agreements, Interim Reports to the Congress, and Administrative Matters and a third classified volume that remains under seal.

On December 3, 1993, the Court ordered that the *Final Report of Independent Counsel* be released to the public subject to the completion of an appendix, containing comments and materials submitted by individuals and their attorneys responding to Volume I of the *Final Report* pursuant to 28 U.S.C. § 594, and the filing of the completed report, with the exception of any deletions required by law or further order of the Court. These comments and materials are compiled in Volume III.

The materials from Independent Counsel's investigations that are not contained in the *Final Report* have been deposited with the National Archives. Materials are also held, some under seal, in the United States District Courts for the Districts of Columbia and Maryland and the Eastern District of Virginia and in the United States Courts of Appeals for the District of Columbia and Fourth Circuits.

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Office of Independent Counsel for Iran/contra Matters Summary of Prosecutions

After Independent Counsel Lawrence E. Walsh's appointment in December 1986, 14 persons were charged with criminal offenses. Eleven persons were convicted, but two convictions were overturned on appeal. Two persons were pardoned before trial and one case was dismissed when the Bush Administration declined to declassify information necessary for trial. On December 24, 1992, President Bush pardoned Caspar W. Weinberger, Duane R. Clarridge, Clair E. George, Elliott Abrams, Alan D. Fiers, Jr., and Robert C. McFarlane.

Completed Trials and Pleas

Elliott Abrams—Pleaded guilty October 7, 1991, to two misdemeanor charges of withholding information from Congress about secret government efforts to support the Nicaraguan contra rebels during a ban on such aid. U.S. District Chief Judge Aubrey E. Robinson, Jr., sentenced Abrams November 15, 1991, to two years probation and 100 hours community service. Abrams was pardoned December 24, 1992.

Carl R. Channell—Pleaded guilty April 29, 1987, to one felony count of conspiracy to defraud the United States. U.S. District Judge Stanley S. Harris sentenced Channell on July 7, 1989, to two years probation.

Thomas G. Clines—Indicted February 22, 1990, on four felony counts of underreporting his earnings to the IRS in the 1985 and 1986 tax years; and falsely stating on his 1985 and 1986 tax returns that he had no foreign financial accounts. On September 18, 1990, Clines was found guilty of all charges. U.S. District Judge Norman P. Ramsey in Baltimore, Md., on December 13, 1990, sentenced Clines to 16 months in prison and $40,000 in fines. He was ordered to pay the cost of the prosecution. The Fourth Circuit U.S. Court of Appeals in Richmond, Va., on February 27, 1992, upheld the convictions. Clines served his prison sentence.

Alan D. Fiers, Jr.—Pleaded guilty July 9, 1991, to two misdemeanor counts of withholding information from Congress about secret efforts to aid the Nicaraguan contras. U.S. District Chief Judge Aubrey E. Robinson, Jr., sentenced Fiers January 31, 1992, to one year probation and 100 hours community service. Fiers was pardoned December 24, 1992.

Clair E. George—Indicted September 6, 1991, on 10 counts of perjury, false statements and obstruction in connection with congressional and Grand Jury investigations. George's trial on nine counts ended in a mistrial on August 26, 1992. Following a second trial on seven counts, George was found guilty December 9, 1992, of two felony charges of false statements and perjury before Congress. The maximum penalty for each count was five years in prison and $250,000 in fines. U.S. District Judge Royce C. Lamberth set sentencing for February 18, 1993. George was pardoned on December 24, 1992, before sentencing occurred.

Albert Hakim—Pleaded guilty November 21, 1989, to a misdemeanor of supplementing the salary of Oliver L. North. Lake Resources Inc., in which Hakim was the principal shareholder, pleaded guilty to a corporate felony of theft of government property in diverting Iran arms sales proceeds to the Nicaraguan contras and

other activities. Hakim was sentenced by U.S. District Judge Gerhard A. Gesell on February 1, 1990, to two years probation and a $5,000 fine; Lake Resources was ordered dissolved.

Robert C. McFarlane—Pleaded guilty March 11, 1988, to four misdemeanor counts of withholding information from Congress. U.S. District Chief Judge Aubrey E. Robinson, Jr., sentenced McFarlane on March 3, 1989, to two years probation, $20,000 in fines and 200 hours community service. McFarlane was pardoned December 24, 1992.

Richard R. Miller—Pleaded guilty May 6, 1987, to one felony count of conspiracy to defraud the United States. U.S. District Judge Stanley S. Harris sentenced Miller on July 6, 1989, to two years probation and 120 hours of community service.

Oliver L. North—Indicted March 16, 1988, on 16 felony counts. After standing trial on 12, North was convicted May 4, 1989 of three charges: accepting an illegal gratuity, aiding and abetting in the obstruction of a congressional inquiry, and destruction of documents. He was sentenced by U.S. District Judge Gerhard A. Gesell on July 5, 1989, to a three-year suspended prison term, two years probation, $150,000 in fines and 1,200 hours community service. A three-judge appeals panel on July 20, 1990, vacated North's conviction for further proceedings to determine whether his immunized testimony influenced witnesses in the trial. The Supreme Court declined to review the case. Judge Gesell dismissed the case September 16, 1991, after hearings on the immunity issue, on the motion of Independent Counsel.

John M. Poindexter—Indicted March 16, 1988, on seven felony charges. After standing trial on five charges, Poindexter was found guilty April 7, 1990, on all counts: conspiracy (obstruction of inquiries and proceedings, false statements, falsification, destruction and removal of documents); two counts of obstruction of Congress and two counts of false statements. U.S. District Judge Harold H. Greene sentenced Poindexter June 11, 1990, to six months in prison on each count, to be served concurrently. A three-judge appeals panel on November 15, 1991, reversed the convictions on the ground that Poindexter's immunized testimony may have influenced the trial testimony of witnesses. The Supreme Court on December 7, 1992, declined to review the case. In 1993, the indictment was dismissed on the motion of Independent Counsel.

Richard V. Secord—Indicted March 16, 1988 on six felony charges. On May 11, 1989, a second indictment was issued charging nine counts of impeding and obstructing the Select Iran/contra Committees. Secord was scheduled to stand trial on 12 charges. He pleaded guilty November 8, 1989, to one felony count of false statements to Congress. Secord was sentenced by U.S. District Chief Judge Aubrey E. Robinson, Jr., on January 24, 1990, to two years probation.

Pre-trial Pardons

Duane R. Clarridge—Indicted November 26, 1991, on seven counts of perjury and false statements about a secret shipment of U.S. HAWK missiles to Iran. The maximum penalty for each count was five years in prison and $250,000 in fines. U.S. District Judge Harold H. Greene set a March 15, 1993, trial date. Clarridge was pardoned December 24, 1992.

Caspar W. Weinberger—Indicted June 16, 1992, on five counts of obstruction, perjury and false statements in connection with congressional and Independent Counsel investigations of Iran/contra. On September 29, the obstruction count was dismissed. On October 30, a second indictment was issued, charging one false statement count. The second indictment was dismissed December 11, leaving four counts remaining. The maximum penalty for each count was five years in prison and $250,000 in fines. U.S. District Judge Thomas F. Hogan set a January 5, 1993, trial date. Weinberger was pardoned December 24, 1992.

Dismissal

Joseph F. Fernandez—Indicted June 20, 1988 on five counts of conspiracy to defraud the United States, obstructing the inquiry of the Tower Commission and making false statements to government agencies. The case was dismissed in the District of Columbia for venue reasons

on the motion of Independent Counsel. A four-count indictment was issued in the Eastern District of Virginia on April 24, 1989. U.S. District Judge Claude M. Hilton dismissed the four-count case November 24, 1989, after Attorney General Richard Thornburgh blocked the disclosure of classified information ruled relevant to the defense. The U.S. Court of Appeals for the Fourth Circuit in Richmond, Va., on September 6, 1990, upheld Judge Hilton's rulings under the Classified Information Procedures Act (CIPA). On October 12, 1990, the Attorney General filed a final declaration that he would not disclose the classified information.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No.: 87-0191
	:	
CARL R. CHANNELL,	:	
	:	Violation: 18 U.S.C.
Defendant.	:	Section 371 (Conspiracy)

I N F O R M A T I O N

APR 29 1987

The Independent Counsel informs the Court that:

INTRODUCTION

1. At all times relevant to this Information, the National Endowment for the Preservation of Liberty ("NEPL") was a non-profit corporation. From NEPL's inception in or about May 1984 to in or about August 1986, NEPL had offices located at 305 4th Street, N.E., Suite 210, Washington, D.C. From in or about August 1986 to the filing of this Information, NEPL had offices located at 1331 Pennsylvania Avenue, N.W., Suite 350 South, Washington, D.C.

2. At all times relevant to this Information, in its promotional literature and in filings with the United States Internal Revenue Service ("IRS"), NEPL purported to be an educational and charitable organization devoted to the study, analysis, and evaluation of the American socio-economic and political systems.

3. At all times relevant to this Information, NEPL made representations to the IRS as to the organization's purposes and activities and, on the basis of those representations, NEPL

was duly qualified by the IRS as an organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code and applicable regulations. Section 501(c)(3) of the Internal Revenue Code, among other things, exempts from federal income taxation corporations "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes...." A contribution to an organization properly recognized and operating as exempt under Section 501(c)(3) is deductible on the contributor's federal income tax return only if it is a "charitable contribution" within the meaning of Section 170(c)(2) of the Internal Revenue Code.

4. At all times relevant to this Information, the defendant CARL R. CHANNELL was the President of NEPL.

5. At all times relevant to this Information, the Contras were insurgents engaged in armed conflict against the Sandinista government in Nicaragua.

THE CONSPIRACY

6. From in or about April 1985 to the filing of this Information, in the District of Columbia and elsewhere, the defendant CARL R. CHANNELL, and others known and unknown to the Independent Counsel, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to defraud the United States of America and the IRS by impeding, impairing, defeating and obstructing the lawful

governmental functions of the IRS in the ascertainment, evaluation, assessment and collection of income taxes.

OBJECTS OF THE CONSPIRACY

7. It was an object of the conspiracy to defraud the IRS and deprive the Treasury of the United States of revenue to which it was entitled by subverting and corrupting the lawful purposes and operations of NEPL by using NEPL for an improper purpose, namely, to solicit contributions to purchase military and other types of non-humanitarian aid for the Contras.

8. It was an object of the conspiracy to defraud the IRS and deprive the Treasury of the United States of revenue to which it was entitled by falsely representing that contributions made to NEPL were tax-deductible when, in truth and in fact, certain of such contributions were not deductible since they were made for a non-deductible purpose, namely, to purchase military and other types of non-humanitarian aid for the Contras.

OVERT ACTS

9. The following overt acts, among others, were committed and caused to be committed, in the District of Columbia and elsewhere, by the defendant CARL R. CHANNELL and his co-conspirators in furtherance of the conspiracy and to effect the objects thereof:

(a) In or about April 1985, in Washington, D.C., the defendant CARL R. CHANNELL met with a consultant to NEPL, the

principals of a public relations firm, and "Contributor A," a potential contributor to NEPL.

(b) On or about July 9, 1985, in a dining room of the Hay-Adams Hotel, Washington, D.C., the defendant CARL R. CHANNELL met with a consultant to NEPL, the principals of a public relations firm, and a United States government official ("the Official").

(c) On or about September 11, 1985, in Dallas, Texas, the defendant CARL R. CHANNELL and the Official met with at least three potential contributors to NEPL.

(d) On or about November 22, 1985, in Washington, D.C., at his government office, the Official met "Contributor B," a potential contributor to NEPL.

(e) On or about January 16, 1986, in Washington, D.C., "Contributor B" caused a check in the amount of $20,000 to be issued to NEPL.

(f) On or about March 28, 1986, in a dining room of the Hay-Adams Hotel, Washington, D.C., the defendant CARL R. CHANNELL and the Official met with "Contributor C," a potential contributor to NEPL.

(g) On or about March 31, 1986, in a dining room of the Hay-Adams Hotel, Washington, D.C., the defendant CARL R. CHANNELL and the Official met with "Contributor C," at which time "Contributor C" delivered to the defendant CHANNELL a check in the amount of $130,000 payable to NEPL.

(h) On or about April 11, 1986, in the cocktail lounge of the Hay-Adams Hotel, Washington, D.C., the defendant CARL R. CHANNELL and the Official met with "Contributor D," a potential contributor to NEPL.

(i) On or about April 15, 1986, "Contributor D" caused a wire transfer in the amount of $470,000 to be made to a NEPL bank account in Washington, D.C.

(j) On or about April 15, 1986, "Contributor D" caused the wire transfer of stocks valued at approximately $1.15 million to a NEPL brokerage account in Washington, D.C.

(k) On or about May 19, 1986, "Contributor D" caused a wire transfer in the amount of $350,000 to be made to a NEPL bank account in Washington, D.C.

(l) On or about November 18, 1986, in Washington, D.C., the defendant CARL R. CHANNELL caused to be filed with the IRS a 1985 Return of Organization Exempt from Income Tax for NEPL.

(Violation of Title 18, United States Code, Section 371.)



LAWRENCE E. WALSH
Independent Counsel

A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	Criminal No. 88-0078
v.	)	
	)	Violation:
ROBERT C. McFARLANE,	)	2 U.S.C. § 192.
	)	
Defendant.	)	

MAR 11 1988

ROBINSON, C.J.

INFORMATION

The Independent Counsel charges:

COUNT ONE

(September 5, 1985 Letter
to the House Permanent Select
Committee on Intelligence)

1. From October 17, 1983 to December 4, 1985, the defendant ROBERT C. McFARLANE was the Assistant to the President for National Security Affairs (the "National Security Advisor"), in which capacity he was responsible for developing, coordinating and implementing national security policy as approved by the President, as well as staffing and administering the National Security Council (the "NSC"). As the National Security Advisor, the defendant ROBERT C. McFARLANE had offices in the West Wing of the White House, Washington, D.C.

2. At all times relevant to this Information, the NSC was a government entity established by the National Security Act of 1947. The function of the NSC was, among other things, to review, guide and direct foreign intelligence and covert action activities. The staff of the NSC was appointed to perform such duties as might be prescribed by the NSC in the performance of its functions. The staff of the NSC had offices located in the Old Executive Office Building (the "OEOB"), Washington, D.C.

3. At all times relevant to this Information, the Contras were military insurgents engaged in military and paramilitary operations in Nicaragua.

4. From in or about December 1981 to on or about October 12, 1984, the United States Government, acting principally through the CIA, pursuant to written presidential findings, provided the Contras with financial support, arms and military equipment, as well as supervision, instruction, tactical and other advice, coordination, intelligence and direction. During fiscal year 1984, Public Law 98-212 prohibited the CIA, the Department of Defense and any other agency or entity of the United States involved in intelligence activities from obligating or expending more than $24 million for direct or indirect support of military or paramilitary operations in Nicaragua. These funds were almost entirely obligated by June 1984.

5. On October 12, 1984, Public Law 98-473 was enacted and expressly prohibited the use of funds available to certain agencies and entities of the United States from being obligated or expended in support of military or paramilitary operations in Nicaragua, stating in relevant part:

> During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

This provision of the law was commonly known as the Boland Amendment.

6. Although the Boland Amendment was modified twice, agencies and entities of the United States involved in intelligence activities were at all times between October 12, 1984 and October 17, 1986 prohibited from spending funds available to them (including, without limitation, funds for salaries and transportation) to provide lethal military or paramilitary supplies to the Contras or to participate in the planning or execution of military or paramilitary operations in Nicaragua. At no time during this period was any member of the NSC staff authorized by a presidential finding to undertake any covert or special activities with respect to Nicaragua, including any of the covert or special activities previously undertaken by the CIA. As of October 18, 1986, the provision

by the CIA of military aid to the Contras was resumed pursuant to statutory authorization and appropriation.

7. On August 20, 1985, the Chairman of the House of Representatives Permanent Select Committee on Intelligence ("HPSCI") wrote a letter on behalf of the Committee to the defendant ROBERT C. McFARLANE in the defendant McFARLANE's capacity as National Security Advisor. The letter referred to press accounts of alleged activities by the NSC with respect to the Contras and requested, among other things, a full report on the activities of the NSC to support the Contras after the enactment of the Boland Amendment.

8. On September 5, 1985, in the District of Columbia, the defendant ROBERT C. McFARLANE, having been summoned to give testimony and to produce papers upon a matter under inquiry before the United States House of Representatives, unlawfully, willfully and knowingly did make default by refusing and failing to answer fully and completely, to wit, defendant McFARLANE signed and caused to be transmitted to HPSCI, a committee of the United States Congress, a letter that stated as follows:

> This is in reply to your letter of August 20, 1985 in which you called attention to press reports of ". . . alleged activities by the National Security Council (staff) regarding the contras in Nicaragua . . ." and asked for a full report and legal justification for any such activities. Like you, I take such charges very seriously and consequently have thoroughly examined the facts and all matters which in any remote fashion could bear upon these charges. From that review I can state with deep personal conviction that at no time did I or any

member of the National Security Council staff violate the letter or spirit of the law. . . .

* * *

It is equally important to stress what we did not do. We did not solicit funds or other support for military or paramilitary activities either from Americans or third parties. . . .

9. The underscored statements and representations unlawfully withheld material information from HPSCI because as the defendant ROBERT C. McFARLANE then and there knew and believed, a member of the NSC staff had violated the letter or spirit of the Boland Amendment by, among other things, soliciting support for military and paramilitary activities of the Contras and offering certain advice for the conduct of the Contras' military activities and organization.

(Violation of Title 2, United States Code, Section 192.)

COUNT TWO

(September 12, 1985 Letter to the House of Representatives Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Affairs)

The Independent Counsel further charges:

10. Paragraphs 1 through 6 of Count One of this Information are repeated, realleged and incorporated by reference herein as if fully set forth in this Count.

11. On August 16, 1985, the Chairman of the House of Representatives Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Affairs wrote a letter on behalf of the Subcommittee to the defendant ROBERT C. McFARLANE in the defendant McFARLANE's capacity as National Security Advisor. The letter referred to "press reports detailing the activities of certain National Security Council staff members in providing advice and fundraising support to Nicaraguan rebel leaders" and requested "all information, including memoranda and any other documents, pertaining to any contact between Lt. Col. North and Nicaraguan rebel leaders as of enactment of the Boland Amendment in October, 1984."

12. On September 12, 1985, in the District of Columbia, the defendant ROBERT C. McFARLANE, having been summoned to give testimony and to produce papers upon a matter under inquiry before the United States House of Representatives, unlawfully, willfully and knowingly did make default by refusing and

failing to answer fully and completely, to wit, defendant McFARLANE signed and caused to be transmitted to the House of Representatives Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Affairs, a subcommittee of the United States Congress, a letter that stated as follows:

> This is in reply to your letter of August 16, regarding the activities of members of the NSC staff in connection with the Nicaraguan democratic resistance. Like you, I take these charges very seriously and consequently have thoroughly examined the facts and circumstances which could bear upon these charges in any fashion.
>
> Based on this review, I want to assure you that my actions, and those of my staff, have been in compliance with both the spirit and the letter of the law. . . .
>
> * * *
>
> Throughout, we have scrupulously abided by the spirit and the letter of the law. None of us has solicited funds, facilitated contacts for prospective potential donors, or otherwise organized or coordinated the military or paramilitary efforts of the resistance.
>
> * * *
>
> Mr. Chairman, like you, I am most concerned that at a time when humanitarian assistance is being extended to the UNO there be no misgivings as to the existence of any parallel efforts to provide, directly or indirectly, support for military or paramilitary activities in Nicaragua. There has not been, nor will there be, any such activities by the NSC staff. . . .

13. The underscored statements and representations unlawfully withheld material information from the House of Representatives Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Affairs because as the defendant McFARLANE then and there knew or had reason to believe, a

member of the NSC staff had violated the spirit and letter of the Boland Amendment by, among other things, providing, directly or indirectly, support for military and paramilitary activities in Nicaragua.

(Violation of Title 2, United States Code, Section 192.)

COUNT THREE

(October 7, 1985 Letter
to the House Permanent Select
Committee on Intelligence)

The Independent Counsel further charges:

14. Paragraphs 1 through 8 of Count One of this Information are repeated, realleged and incorporated by reference herein as if fully set forth in this Count.

15. On September 12, 1985, having received the letter referred to in Count One of this Information and having met with the defendant ROBERT C. McFARLANE, the Chairman of HPSCI wrote a letter, on behalf of the Committee, to the defendant McFARLANE, enclosing a series of questions "concerning allegations about the activities of Lieutenant Colonel Oliver North."

16. On October 7, 1985, in the District of Columbia, the defendant ROBERT C. McFARLANE, having been summoned to give testimony and to produce papers upon a matter under inquiry before the United States House of Representatives, unlawfully, willfully and knowingly did make default by refusing and failing to answer fully and completely, to wit, defendant McFARLANE signed and caused to be transmitted to the House Permanent Select Committee on Intelligence, a committee of the United States Congress, a letter that stated as follows:

> Q -- When the CIA had to withdraw from their day-to-day contact with the rebels, it has been alleged in the New York Times (8 Aug 85) that Colonel North tried to fill the void, partly through

helping facilitate the supplying of logistics help. Did Colonel North, in his capacity as a staff member of the National Security Council, use his influence to facilitate the movement of supplies, either raised privately in this country or otherwise, to the contras?

A -- Lieutenant Colonel North did not use his influence to facilitate the movement of supplies to the resistance.

* * *

Q -- General Singlaub has stated (Washington Post, 9 Aug 85) that he would often talk to Colonel North and inform him what he was doing and then state that if it was a dumb idea, for North to send him a signal. Is that your impression of the relationship between General Singlaub and Colonel North?

A -- There is no official or unofficial relationship with any member of the NSC staff regarding fund raising for the Nicaraguan democratic opposition. This includes the alleged relationship with General Singlaub.

* * *

Q -- The Nicaraguan freedom fighters, in the last two months, are reported by the U.S. Embassy, Tegucigalpa, to have received a large influx of funds and equipment with some estimates of their value reaching as high as $10 million or more. Do you know where they have obtained this assistance?

A -- No.

17. The underscored answers unlawfully withheld material information from HPSCI because, among other things, the defendant McFARLANE then and there, (a) knew and believed that Lieutenant Colonel North had used his influence to facilitate the movement of certain supplies to the Contras; (b) knew or had reason to believe that a member of the NSC staff had had contact with retired Major General John K. Singlaub regarding

fund raising for the Contras; and (c) knew and believed that the Contras had received millions of dollars from a third country.

(Violation of Title 2, United States Code, Section 192.)

COUNT FOUR

(December 8, 1986 Testimony
before the House of Representatives
Committee on Foreign Affairs)

The Independent Counsel further charges:

18. Paragraphs 1 through 6 of Count One of this Information are repeated, realleged and incorporated by reference herein as if fully set forth in this Count.

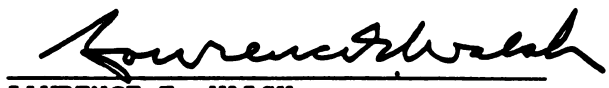
19. On December 8, 1986, in the District of Columbia, the defendant ROBERT C. McFARLANE, having been summoned to give testimony before the United States House of Representatives Committee on Foreign Affairs, unlawfully, willfully and knowingly did make default by refusing and failing to answer fully and completely, to wit, defendant McFARLANE withheld material information from the House of Representatives Committee on Foreign Affairs, a committee of Congress, as follows:

> Q -- There have also been press reports that the [nationals of a third country] have been indirectly involved in financing the contras. Are you aware of any such activities?
>
> A -- I have seen the reports and I have heard that the [nationals of such third country] have contributed. The concrete character of that is beyond my ken.

20. The underscored answer unlawfully withheld material information from the United States House of Representatives Committee on Foreign Affairs because as the defendant McFARLANE then and there knew and believed, the defendant McFARLANE had

been aware since 1984 that nationals of the third country referred to had expressed willingness to contribute millions of dollars to the Contras, the defendant McFARLANE had provided a representative of that third country with the number of a Contra-controlled bank account into which the funds could be deposited, and the defendant McFARLANE was aware that nationals of that third country had in fact made contributions to the Contras totalling millions of dollars.

(Violation of Title 2, United States Code, Section 192.)



LAWRENCE E. WALSH
Independent Counsel

RECEIVED
MAR 17 1988

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on January 28, 1987

UNITED STATES OF AMERICA	:	**Criminal No.** 88-0080
	:	
v.	:	
	:	**Grand Jury Original**
JOHN M. POINDEXTER,	:	
OLIVER L. NORTH,	:	**Violations:**
RICHARD V. SECORD, and	:	**18 U.S.C. § 371;**
ALBERT HAKIM,	:	**18 U.S.C. § 641;**
	:	**18 U.S.C. § 1343;**
Defendants.	:	**18 U.S.C. § 1505;**
	:	**18 U.S.C. § 1001;**
	:	**18 U.S.C. § 2071(b);**
	:	**18 U.S.C. § 201(f) and (g);**
GESELL, J.	:	**18 U.S.C. § 1503;**
	:	**18 U.S.C. § 654;**
	:	**18 U.S.C. § 2.**
	:	
	:	
	:	**(Conspiracy; Theft of Government Property; Wire Fraud; Obstruction of Inquiries and Proceedings; False Statements; Falsification, Destruction and Removal of Documents; Offer, Payment and Receipt of Gratuities; Obstruction of Justice; Conversion of Property of Another by Government Official; Aiding and Abetting)**

MAR 16 1988

INDICTMENT

COUNT ONE

(Conspiracy by POINDEXTER, NORTH, SECORD and HAKIM)

The Grand Jury charges:

INTRODUCTION

1. At all times relevant to this Indictment, the National Security Council (the "NSC") was a government entity established by the National Security Act of 1947, whose statutory members were the President of the United States, the Vice President, the Secretary of State and the Secretary of Defense. At all times relevant to this Indictment, other officials were also members of the NSC by appointment of the President. The function of the NSC was to advise the President on the integration of domestic, foreign and military policies relating to the national security, to facilitate cooperation among the military services and other departments and agencies of the government in matters involving the national security, and to review, guide and direct foreign intelligence and covert action activities. The Assistant to the President for National Security Affairs (the "National Security Advisor") was responsible for developing, coordinating and implementing national security policy as approved by the President, as well as for staffing and administering the NSC. The staff of the NSC was appointed to perform such duties as might be prescribed by the NSC in connection with the performance of its functions.

The staff of the NSC had offices located in the Old Executive Office Building ("OEOB"), Washington, D.C.

2. At all times relevant to this Indictment, intelligence activities undertaken by the United States were subject to the restrictions and limitations contained in Executive Order 12333, promulgated by the President on December 4, 1981, which, in part, prohibited any United States Government agency, except the Central Intelligence Agency (the "CIA"), from conducting covert actions without a determination by the President that the agency other than the CIA was more likely to achieve a particular objective. Executive Order 12333 also provided that the NSC "shall act as the highest Executive Branch entity that provides review of, guidance for and direction to the conduct of all national foreign intelligence, counterintelligence, and special activities, and attendant policies and programs." On January 18, 1985, the President signed National Security Decision Directive 159, which required that the President specifically approve by a written finding all covert actions undertaken by any United States Government agency or entity.

3. At all times relevant to this Indictment, the Contras were military insurgents engaged in military and paramilitary operations in Nicaragua.

4. From in or about December 1981 to on or about October 12, 1984, the United States Government, acting principally through the CIA, pursuant to written presidential

findings, provided the Contras with financial support, arms and military equipment, as well as instruction, tactical and other advice, coordination, intelligence and guidance. During fiscal year 1984, Public Law 98-212 prohibited the CIA, the Department of Defense and any other agency or entity of the United States involved in intelligence activities from obligating or expending more than $24 million for direct or indirect support of military or paramilitary operations in Nicaragua. These funds were almost entirely obligated by June 1984.

5. On October 12, 1984, Public Law 98-473 was enacted and expressly prohibited the use of funds available to certain agencies and entities of the United States from being obligated or expended in support of military or paramilitary operations in Nicaragua, stating in relevant part:

> During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

This provision of the law was commonly known as the Boland Amendment.

6. Although the Boland Amendment was modified twice, agencies and entities of the United States involved in intelligence activities were at all times between October 12,

1984 and October 17, 1986 prohibited from spending funds available to them (including, without limitation, funds for salaries and transportation) to provide lethal military or paramilitary supplies to the Contras or to participate in the planning or execution of military or paramilitary operations in Nicaragua. At no time during this period was any member of the NSC staff authorized by a presidential finding to undertake any covert or special activities with respect to Nicaragua, including any of the covert or special activities previously undertaken by the CIA. As of October 18, 1986, the provision by the CIA of military aid to the Contras was authorized again pursuant to new enactment and appropriation.

7. Beginning with the overthrow of the Shah of Iran on or about January 16, 1979 and the seizure of the United States embassy in Iran and its staff on November 4, 1979, relations between the United States Government and the government of Iran were characterized by mutual hostility and tension. At all times relevant to this Indictment, the United States Government imposed an embargo on shipments of arms to Iran. In January 1984, the Secretary of State designated Iran a sponsor of international terrorism and, thereafter, the United States actively urged its allies not to permit the shipment of arms to Iran, in part, because of its sponsorship of international terrorism and in part, because of the continuation of the Iran-Iraq war.

8. As of June 1985, seven American citizens, who had been kidnapped by terrorists in Lebanon, were being held hostage.

THE DEFENDANTS

9. At all times relevant to this Indictment until November 25, 1986, the defendant JOHN M. POINDEXTER was an officer in the United States Navy who was detailed to the NSC. From October 17, 1983 to December 4, 1985, the defendant POINDEXTER held the position of Deputy Assistant to the President for National Security Affairs and assisted Robert C. McFarlane, the National Security Advisor, in the supervision and direction of the NSC staff. On December 4, 1985, the defendant POINDEXTER succeeded McFarlane as National Security Advisor. The defendant POINDEXTER held that position until November 25, 1986, when he resigned. The defendant POINDEXTER assumed the title of Vice Admiral on December 24, 1984. At all times relevant to this Indictment after May 15, 1985, the defendant POINDEXTER held the rank of Vice Admiral.

10. At all times relevant to this Indictment until November 25, 1986, the defendant OLIVER L. NORTH was a Lieutenant Colonel in the United States Marine Corps detailed to the NSC staff, where he held the position of Deputy Director, Political-Military Affairs. Among other things, the defendant NORTH was designated to perform certain activities with respect to the Contras, counter-terrorism, and the United States initiative involving the sale of arms to elements in

Iran and efforts to obtain the release of American citizens held hostage in Lebanon. In connection with these activities, the defendant NORTH from time to time used aliases, including "William Goode" and "Mr. Green." On November 25, 1986, the defendant NORTH was discharged from the NSC staff.

11. At all times relevant to this Indictment, the defendant RICHARD V. SECORD was President of Stanford Technology Trading Group International ("STTGI"), with offices located in Vienna, Virginia. From September 11, 1975 to July 11, 1978, the defendant SECORD, while on active duty in the United States Air Force, served as Chief of the Air Force Section of the United States Military Assistance Advisory Group in Iran. From April 13, 1981 to April 30, 1983, the defendant SECORD served as Deputy Assistant Secretary of Defense for International Security Affairs. When he retired from active duty in the Air Force on May 1, 1983, the defendant SECORD held the rank of Major General. Beginning in the fall of 1984, the defendant SECORD undertook to provide supplies, including lethal military supplies, to the Contras. Beginning in the fall of 1985, the defendant SECORD also undertook to assist in the transfer of weapons to Iran on behalf of the United States in an initiative involving the sale of arms to elements in Iran and efforts to obtain the release of American citizens held hostage in Lebanon. In connection with these activities, the defendant SECORD from time to time used the aliases "Richard Copp" and "Major General Richard Adams."

12. At all times relevant to this Indictment, the defendant ALBERT HAKIM was the Chairman of the Board of Directors of STTGI. Beginning in the fall of 1984, the defendant HAKIM organized the corporate and financial arrangements for an effort to provide supplies, including lethal military supplies, to the Contras, and beginning in late 1985 or early 1986, the defendant HAKIM participated on behalf of the United States in an initiative involving the sale of arms to elements in Iran and efforts to obtain the release of American citizens held hostage in Lebanon. In connection with these activities, the defendant HAKIM from time to time used the aliases "Abe" and "Ibrahim Ibrahamian."

THE CONSPIRACY AND ITS OBJECTS

13. From the late spring or early summer of 1985 up to and including at least December 1986, in the District of Columbia and elsewhere, the defendants JOHN M. POINDEXTER, OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM, together with others known and unknown to the Grand Jury, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together and with each other:

(a) to defraud the United States:

(1) by impeding, impairing, defeating and obstructing the lawful governmental functions of the United States, including compliance with legal restrictions governing the conduct of military and covert

action activities and congressional control of appropriations and exercise of oversight for such activities, by deceitfully and without legal authorization organizing, directing and concealing a program to continue the funding of and logistical and other support for military and paramilitary operations in Nicaragua by the Contras, at a time when the prohibitions of the Boland Amendment and other legal restrictions on the execution of covert actions were in effect;

(2) by depriving the Government of the United States of the honest and faithful services of employees free from conflicts of interest, corruption and self-dealing by deceitfully using the influence and position of the defendants JOHN M. POINDEXTER and OLIVER L. NORTH to generate funds, including funds from the sale by the Government of the United States of arms to elements in Iran, for the defendants RICHARD V. SECORD and ALBERT HAKIM, with the understanding that the defendants SECORD and HAKIM would, in turn, without governmental accountability place at the disposal of the defendants POINDEXTER and NORTH a portion of those funds for activities and projects designated by those government officials, including the support of military and paramilitary operations in Nicaragua by the Contras; and

(3) by impeding, impairing, defeating and obstructing the lawful governmental functions of the

United States, by deceitfully exploiting for their own purposes and corrupting a United States Government initiative involving the sale of arms to elements in Iran, rather than pursuing solely the specified governmental objectives of the initiative, including the release of Americans being held hostage in Lebanon.

(b) to commit offenses against the United States, including:

(1) Violations of Title 18, United States Code, Section 641, Embezzling, Stealing and Converting United States Government Property, as alleged in Count Two of this Indictment;

(2) Violations of Title 18, United States Code, Section 1343, Wire Fraud, as alleged in Count Three of this Indictment;

(3) Violations of Title 18, United States Code, Section 1505, Obstructing Inquiries Being Conducted By Congress and the Attorney General Acting on Behalf of the President, as alleged in Counts Four, Eight through Ten, Thirteen and Fourteen of this Indictment;

(4) Violations of Title 18, United States Code, Section 1001, Making False and Misleading Statements to Government Agencies, including Committees of Congress and the Attorney General Acting on Behalf of the President, as alleged in Counts Five through Seven, Eleven, Twelve, and Fifteen of this Indictment;

(5) Violations of Title 18, United States Code, Section 2071, Falsifying, Removing and Destroying Official Documents of the United States, as alleged in Count Sixteen of this Indictment.

THE BACKGROUND OF THE CONSPIRACY

14. In the fall of 1984, the defendant OLIVER L. NORTH and others undertook through their governmental offices to continue and conceal various activities in support of the Contras.

15. Beginning in late 1984 and continuing thereafter through the middle of 1985, the defendant OLIVER L. NORTH gave military intelligence, advice and direction to the Contras, including military intelligence provided by agencies and entities involved in intelligence activities. To give such intelligence, advice and direction in a manner that would conceal the defendant NORTH's role in such activities, the defendant NORTH, on numerous occasions, utilized intermediaries as couriers to the Contras.

16. In order to continue activities in support of the Contras and to conceal those activities, the defendant OLIVER L. NORTH enlisted and utilized private individuals to provide lethal military weapons and supplies to the Contras.

17. In the second half of 1984, the defendant OLIVER L. NORTH arranged for the defendant RICHARD V. SECORD to obtain and sell military weapons and supplies to the Contras. The

defendant ALBERT HAKIM joined with the defendant SECORD in these activities.

18. The defendant OLIVER L. NORTH assisted the defendants RICHARD V. SECORD and ALBERT HAKIM in this effort by, among other things, facilitating contacts between the defendant SECORD and representatives of the Contras, including Adolfo Calero, a Contra leader.

19. Beginning in at least the fall of 1984, the defendant OLIVER L. NORTH ascertained the military requirements of the Contras, participated in the selection of military weapons and supplies for them and expedited and facilitated the purchase of these weapons and supplies by the Contras from the defendants RICHARD V. SECORD and ALBERT HAKIM.

20. From approximately January 1985 to approximately June 1985, the defendants RICHARD V. SECORD and ALBERT HAKIM, among others, obtained and sold to the Contras substantial amounts of military equipment, including automatic rifles, mortars and mortar rounds, anti-aircraft missiles and launchers, grenades and grenade launchers, recoilless rifles, machine guns and millions of rounds of ammunition.

21. From their sales of military equipment to the Contras, the defendants RICHARD V. SECORD and ALBERT HAKIM derived substantial revenues and profits, which they concealed by establishing and utilizing foreign corporations with Swiss bank accounts. Up until the spring of 1985, the principal

corporation utilized by the defendants SECORD and HAKIM was Energy Resources International S.A.

THE MEANS OF THE CONSPIRACY

22. Among the means by which the defendants JOHN M. POINDEXTER, OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM and their co-conspirators would and did carry out the conspiracy were the following:

23. In or before the middle of 1985, the defendants OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM and others commenced an enterprise (the "Enterprise") that was intended, among other things, to support military and paramilitary operations in Nicaragua by the Contras and to conduct covert action operations.

24. In the middle of 1985, the defendants OLIVER L. NORTH and RICHARD V. SECORD, through the Enterprise, took control and direction of the selection and provision of a significant portion of the lethal military weapons and supplies for the Contras. The defendants NORTH and SECORD informed certain Contra leaders that, thereafter, they would provide the Contras with lethal military weapons and supplies instead of funds with which to purchase such weapons and supplies. Thereafter, the defendants NORTH and SECORD established a clandestine supply network to support military and paramilitary operations in Nicaragua by the Contras and, among other things, undertook to

enable the Contras to engage in military operations in southern Nicaragua (the "southern front").

25. Beginning in or before the middle of 1985, the defendant ALBERT HAKIM, acting in coordination with the defendants OLIVER L. NORTH and RICHARD V. SECORD, provided and oversaw a clandestine financial infrastructure for the Enterprise by making available to the Enterprise the foreign corporations and Swiss bank accounts already under his control and by creating additional foreign corporations and opening additional Swiss bank accounts. The principal corporation utilized thereafter by the Enterprise was Lake Resources Inc. ("Lake Resources"). In July 1985, the defendant HAKIM caused a bank account in the name of Lake Resources to be opened at the Credit Suisse Bank in Geneva, Switzerland. By November 1986, the financial network of the Enterprise also included the following foreign corporations with foreign bank accounts: Hyde Park Square Corp., Dolmy Business Inc., Albon Values Corp., Gulf Marketing Consultants Ltd., Toyco Inc., Udall Research Corp. and Defex S.A.

26. By late 1985, the defendant OLIVER L. NORTH had advised the defendant JOHN M. POINDEXTER of aspects of the Enterprise's operation.

27. From the late spring or early summer of 1985 through November 1986, the defendant RICHARD V. SECORD, acting in coordination with the defendant OLIVER L. NORTH, directly and through others created and maintained a logistical

infrastructure for the Enterprise by, among other things, purchasing aircraft, recruiting and employing pilots, crews, and other individuals and arranging for the use of a military airfield and warehouse in a foreign country ("Country A"). The defendants NORTH and SECORD and those acting in concert with them concealed their role in creating and maintaining this infrastructure by, among other things, instructing the individuals they had recruited not to reveal the participation of the defendants NORTH and SECORD in these activities and the use of intervening corporate entities.

28. From the late spring or early summer of 1985 through November 1986, the defendant OLIVER L. NORTH and others took steps to assist the Contras in opening the southern front, in part by secretly obtaining the assistance of an official of the CIA stationed in Costa Rica. Together with that official of the CIA, and in order to conceal their participation in these activities, the defendant NORTH enlisted an individual and utilized Udall Research Corp., a Panamanian corporation, to acquire land in Costa Rica and construct an airstrip there for use in connection with the delivery of military weapons and supplies to the southern front.

29. From late 1985 through November 1986, the Enterprise, under the direction of the defendants OLIVER L. NORTH and RICHARD V. SECORD, purchased and delivered hundreds of thousands of pounds of lethal military weapons and supplies to Central America for use in Nicaragua by the Contras.

30. From 1985 to November 1986, the defendant OLIVER L. NORTH acted as a fundraiser for the Contras and for the Enterprise by soliciting and obtaining funds from various sources purportedly for the Contras, directing a part of those funds to the Contras, and directing a substantial part of those funds to bank accounts in the control of the Enterprise to be expended by the defendants RICHARD V. SECORD and ALBERT HAKIM in coordination with the defendant NORTH.

31. In the spring and early summer of 1985, in order to fund the Enterprise, the defendant OLIVER L. NORTH began raising money through the National Endowment for the Preservation of Liberty ("NEPL") by, among other things, arranging meetings with officers of and potential contributors to NEPL and others participating in soliciting contributions for lethal military and other supplies for the Contras.

32. From the fall of 1985 to December 1986, the defendant OLIVER L. NORTH controlled the disposition of funds raised for the Contras through NEPL.

33. In order to conceal the role of the defendant OLIVER L. NORTH in controlling the disposition of the funds raised through NEPL, the defendant NORTH arranged for such monies to be transferred from NEPL through an intermediary entity to foreign corporate bank accounts under his control in the Cayman Islands and Switzerland. Between approximately June 1, 1985 and November 25, 1986, the defendant NORTH and others in concert with him raised approximately $3.2 million through

NEPL, of which approximately $1.7 million was transferred at the direction of the defendant NORTH to the bank account of Lake Resources, thereby placing such funds at the disposal of the Enterprise.

34. Of the $3.2 million raised through NEPL by the defendant OLIVER L. NORTH and others in concert with him purportedly for the Contras, the defendant NORTH directed that various amounts be paid to various individuals and entities for purposes of the Enterprise, including over $200,000 for the benefit of Mousalreza Abrahim Zadeh, a/k/a "Prince Al-Masoudi," $75,000 for the Institute for Terrorism and Subnational Conflict to provide compensation and employment for the defendant NORTH's associate, Robert W. Owen, and $450,000 for World Affairs Counselors, Inc., an entity in the Cayman Islands, in compensation for the assistance of certain individuals in raising funds for the Enterprise and transferring those funds through foreign and domestic bank accounts.

35. From late 1985 to November 1986, the defendants JOHN M. POINDEXTER, OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM, in order to raise additional funds for the Enterprise, used the influence and position of the defendants POINDEXTER and NORTH in exploiting and corrupting a United States Government initiative involving the sale of arms to elements in Iran and efforts to obtain the release of American citizens held hostage in Lebanon, by secretly and deceptively generating

and diverting millions of dollars from the proceeds of those arms sales to Enterprise bank accounts to be spent, with the knowledge and approval of the defendant JOHN M. POINDEXTER, for various purposes designated by the defendants NORTH, SECORD and HAKIM, including the purchase and delivery of military weapons and supplies for the Contras.

36. In the last half of 1985, the government of Israel undertook an initiative to Iran, under which the government of Israel transferred to Iran approximately 500 TOW missiles originally obtained from the United States. In November 1985, with the knowledge and approval of the defendant JOHN M. POINDEXTER, the defendant OLIVER L. NORTH undertook to assist and coordinate an arms shipment of Hawk missiles to Iran by the government of Israel, as part of its initiative to Iran. In doing so, he secured the assistance of the defendant RICHARD V. SECORD.

37. In order to hire aircraft to transport several shipments of Hawk missiles to Iran, the defendant OLIVER L. NORTH caused approximately $1 million from certain Israeli participants in the transaction to be deposited into the bank account of Lake Resources, a bank account used and controlled by the Enterprise to finance the purchase and delivery of weapons and supplies for the Contras. After all of the shipments of Hawk missiles to Iran, except the first, were cancelled, the Enterprise's account, Lake Resources, was left with an unused balance of several hundred thousand dollars.

38. In December 1985, certain of the conspirators caused thousands of pounds of lethal military supplies to be transported to Central America for use by the Contras.

39. On January 17, 1986, the defendant JOHN M. POINDEXTER orally briefed the President from a memorandum prepared by the defendant OLIVER L. NORTH, after which the President signed a finding authorizing the sale of arms by the United States Government to elements in Iran in support of a United States initiative to establish a more moderate government in Iran, to obtain intelligence relating to Iran, and to secure the release of American hostages held in Lebanon.

40. In January 1986, the defendants JOHN M. POINDEXTER and OLIVER L. NORTH arranged for the defendant RICHARD V. SECORD, and through him the Enterprise, to assist the United States initiative to Iran by acting as an agent and intermediary of the United States Government, under the direction of the defendants POINDEXTER and NORTH, to receive for the United States funds in payment of the weapons to be shipped to Iran, to transmit funds to the CIA and to transport weapons from the United States to Iran. By selecting the defendant SECORD, and through him the Enterprise, to participate in the United States initiative, the defendants POINDEXTER and NORTH created circumstances under which the Enterprise would be able secretly to control the proceeds from the sale of arms to elements in Iran and divert a substantial part of such proceeds into the financial network of the

Enterprise subject to further direction by the defendants POINDEXTER and NORTH, thereby depriving the United States of the honest and faithful services of employees free from conflicts of interest, corruption and self-dealing.

41. In January 1986, as part of the United States initiative, the defendant OLIVER L. NORTH negotiated on behalf of the United States with a representative of elements in Iran the transfer of 4,000 TOW missiles to Iran at a price of $10,000 per TOW missile, with 1,000 of the 4,000 TOW missiles to be delivered in a first installment. At the same time, the defendant NORTH directed the representative of the Iranians to deposit the $10 million payment for the first 1,000 TOW missiles into the Enterprise's secret Swiss bank account -- Lake Resources, the same bank account then used to finance the Contra resupply operation. The defendant NORTH also advised the defendant JOHN M. POINDEXTER that the representative of the Iranians had offered to pay $10,000 per missile.

42. In early 1986, the defendants OLIVER L. NORTH and RICHARD V. SECORD agreed to retain for the Enterprise a substantial part of the $10 million payment for the first shipment of TOW missiles by having the defendant SECORD transmit to the United States through the CIA substantially less than was paid for these missiles on behalf of the Iranians. In furtherance of this plan, the defendant NORTH told an official of the CIA that a price of $6,000 per TOW missile was too high and should be reduced, without revealing

that the Iranian representative had already offered to pay $10,000 per missile. Thereafter, the price to be paid to the CIA was reduced to approximately $3,469 per TOW missile, for a total of $3.7 million for 1,000 TOW missiles, including costs.

43. In February 1986, one of the Enterprise's bank accounts, Lake Resources, received $10 million in payment on behalf of Iran for the 1,000 TOW missiles pursuant to the agreement with the representative of elements in Iran negotiated by the defendant OLIVER L. NORTH on behalf of the United States.

44. In February 1986, certain of the conspirators, in turn, directed that only approximately $3.7 million be transmitted to the CIA, thus leaving a remainder of over $6 million in the Enterprise account. At that time, the United States Government shipped 1,000 TOW missiles to Iran. Certain of the conspirators caused substantial sums of money from Enterprise bank accounts to be spent to purchase and deliver military weapons and supplies for the Contras. The defendants RICHARD V. SECORD and ALBERT HAKIM also caused funds to be transferred to Swiss investment accounts under the control of the defendants SECORD and HAKIM for their personal benefit.

45. In early March 1986, certain of the conspirators caused thousands of pounds of lethal military supplies to be delivered to Central America for the Contras.

46. In April 1986, certain of the conspirators caused

thousands of pounds of lethal military supplies to be delivered to Central America for the Contras.

47. In the spring of 1986, as part of the continuing United States initiative, pursuant to the activities of the defendants JOHN M. POINDEXTER and OLIVER L. NORTH, the United States Government agreed to sell Hawk missile spare parts to elements in Iran at a total price of $15 million. The defendant NORTH, among other things, directed his assistant to calculate the price to be charged the Iranian representative for the Hawk spare parts by multiplying by a factor of 3.7 the prices for those spare parts contained in a United States Government price list.

48. In May 1986, at the defendant OLIVER L. NORTH's direction, $15 million was deposited on behalf of elements in Iran into an Enterprise bank account. At about the same time, an Enterprise bank account received $1.46 million from other sources. Thereafter, certain of the conspirators caused only $6.5 million to be transmitted to the United States through the CIA for the Hawk spare parts for Iran and TOW missiles for Israel to replenish Israel for its transfer of TOW missiles to Iran in August and September 1985, thus leaving a remainder of almost $10 million in the bank accounts of the Enterprise. The defendant NORTH then advised the defendant JOHN M. POINDEXTER that a substantial amount was available for the support of the Contras. The defendants JOHN M. POINDEXTER, OLIVER L. NORTH and RICHARD V. SECORD caused the United States Government to

ship the agreed upon Hawk missile spare parts to Israel for eventual delivery to Iran. Certain of the conspirators caused substantial sums of money from Enterprise bank accounts to be spent to purchase and deliver military weapons and supplies for the Contras. The defendants RICHARD V. SECORD and ALBERT HAKIM also caused funds from such accounts to be transferred to Swiss investment accounts under their control for the personal benefit of the defendants SECORD and HAKIM.

49. In May 1986, certain of the conspirators caused thousands of pounds of arms to be delivered to Central America for the Contras.

50. In October and November 1986, as part of the continuing United States initiative, the defendants JOHN M. POINDEXTER, OLIVER L. NORTH and RICHARD V. SECORD caused the United States Government to ship 500 TOW missiles to Iran at a total price of $3.6 million. Pursuant to the agreement negotiated on behalf of the United States Government, the Iranian representatives paid into an Enterprise bank account approximately $3.6 million in payment for the missiles. Certain of the conspirators, in turn, caused only approximately $2.037 million to be transmitted to the United States through the CIA, thus leaving a remainder of approximately $1.5 million in the bank account of the Enterprise. The 500 TOW missiles were then delivered.

51. From approximately January 1986 to November 1986, the defendants OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM,

with the knowledge and approval of the defendant JOHN M. POINDEXTER, participated on behalf of the United States in numerous meetings with the Iranian representatives at which they discussed and negotiated various aspects of the initiative, thereby generating funds in the bank accounts of the Enterprise to be used, among other things, to support activities and projects designated by themselves rather than pursuing solely the specified governmental objectives of the Iran initiative, including the release of American citizens held hostage in Lebanon, free from conflicts of interest, corruption and self-dealing.

52. From the second half of 1985 to at least December 1986, the defendants RICHARD V. SECORD and ALBERT HAKIM followed the direction of the defendant OLIVER L. NORTH, with the knowledge and approval of the defendant JOHN M. POINDEXTER, as to the expenditure of part of the funds in the possession of the Enterprise. Those expenditures included the provision of military weapons and supplies to the Contras, the payment of at least $200,000 on behalf of Contra leaders, the purchase for approximately $100,000 of radios for a foreign political group, the provision of a substantial amount of cash for purported efforts by agents of the United States Drug Enforcement Administration to obtain information regarding American hostages in Lebanon and the purchase for approximately $320,000 of a ship to be used for various clandestine activities.

53. From 1985 to at least December 1986, to conceal and cover up their personal enrichment, the expenditure by the Enterprise of funds on behalf of the Contras and the participation of government officials in the operations of the Enterprise, the defendants RICHARD V. SECORD and ALBERT HAKIM generated large amounts of untraceable cash through which they distributed funds of the Enterprise. In addition, during that same period, the defendant OLIVER L. NORTH utilized large amounts of cash and traveler's checks for purposes of the Enterprise.

54. In June 1986, in a further effort to raise funds for the Enterprise, the defendant OLIVER L. NORTH attempted to divert to the Enterprise a $10 million contribution from Brunei intended for humanitarian aid to the Contras by undertaking to supply an official of the Department of State with the bank account number of Lake Resources instead of the number of a Contra bank account, which the official had requested.

55. From August 1985 through November 1986, in order to conceal and cover up their illegal activities and to perpetuate the scheme, the conspirators, including the defendants JOHN M. POINDEXTER and OLIVER L. NORTH, deceived Congress and committees of Congress by making false, fictitious, fraudulent and misleading statements and representations, concerning, among other things, the involvement of officials of the United States, including members of the NSC staff, in support of the

military and paramilitary operations in Nicaragua by the Contras at a time when the Boland Amendment was in effect.

56. From early November 1986 to November 21, 1986, to conceal and cover up their illegal activities, the defendant JOHN M. POINDEXTER made false and misleading statements to Congress and committees of Congress with respect to the government-sponsored Iran initiative and the sale of arms to elements in Iran, and certain of the conspirators caused to be drafted, in anticipation of appearances before committees of Congress by the defendant POINDEXTER and William J. Casey, the Director of the CIA, a false and misleading chronology with respect to the United States initiative to Iran and the sale of arms to elements in Iran.

57. In November 1986, to conceal and cover up the conspirators' illegal activities, the defendants JOHN M. POINDEXTER and OLIVER L. NORTH altered, destroyed, removed and caused to be altered, destroyed and removed official and other documents and records and copies of official and other documents and records, including classified documents and records of the NSC and the staff of the NSC.

58. In late November 1986, to conceal and cover up the conspirators' illegal activities, the defendant OLIVER L. NORTH made false and misleading statements to the Attorney General, who was conducting a fact-finding inquiry on behalf of the President.

OVERT ACTS

59. The following overt acts, among others, were knowingly committed and caused to be committed, in the District of Columbia and elsewhere, by the defendants JOHN M. POINDEXTER, OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM and their co-conspirators in furtherance of the conspiracy and to effect the objects thereof:

(1) On June 28, 1985, in Miami, Florida, the defendants OLIVER L. NORTH and RICHARD V. SECORD met with, among others, Adolfo Calero and Enrique Bermudez, the Contras' military commandant.

(2) In July 1985, the defendant ALBERT HAKIM caused a bank account to be opened in Geneva, Switzerland, in the name of Lake Resources.

(3) On July 9, 1985, at the Hay-Adams Hotel, Washington, D.C., the defendant OLIVER L. NORTH met with Carl R. Channell, the President of NEPL, Daniel L. Conrad, an employee of NEPL, and Richard R. Miller, a principal in a public relations firm located in Washington, D.C., known as International Business Communications ("IBC").

(4) In or about August 1985, in Vienna, Virginia, the defendant RICHARD V. SECORD met with Richard Gadd, a retired Colonel in the United States Air Force, to discuss providing weapons and supplies to the Contras.

(5) In August 1985, in Washington, D.C., the defendant OLIVER L. NORTH directed Robert W. Owen to travel to

Central America to discuss with United States officials the building of an airstrip in Costa Rica.

(6) On August 31, 1985, the defendant JOHN M. POINDEXTER sent a message to the defendant OLIVER L. NORTH on one of the NSC computer systems which allowed the defendant NORTH thereafter to utilize that computer system to communicate directly with the defendant POINDEXTER without going through the NSC's Executive Secretary.

(7) In late August or early September 1985, in Washington, D.C., the defendant OLIVER L. NORTH made representations to the counsel for the President's Intelligence Oversight Board.

(8) On September 5, 1985, in Washington, D.C., the defendant OLIVER L. NORTH caused certain misrepresentations to be made in a letter sent to the Chairman of the House of Representatives Permanent Select Committee on Intelligence.

(9) On September 11, 1985, in Dallas, Texas, the defendant OLIVER L. NORTH met with Carl R. Channell, Daniel L. Conrad and Nelson Bunker Hunt, a contributor to NEPL.

(10) On September 12, 1985, in Washington, D.C., the defendant OLIVER L. NORTH caused certain misrepresentations to be made in a letter sent to the Chairman of the House of Representatives Committee on Foreign Affairs Subcommittee on Western Hemisphere Affairs.

(11) On or about September 20, 1985, in Washington, D.C., the defendant OLIVER L. NORTH caused Richard R. Miller to

transfer $130,000 in NEPL funds from the bank account of IBC in Washington, D.C., to the bank account of Lake Resources in Geneva, Switzerland.

(12) On September 20, 1985, the defendant OLIVER L. NORTH sent a letter to Felix Rodriguez, a/k/a "Max Gomez," in Miami, Florida.

(13) On or about September 26, 1985, in Washington, D.C., the defendant OLIVER L. NORTH caused Richard R. Miller to transfer $100,000 in NEPL funds from IBC to the bank account in the Cayman Islands of I.C. Inc., an entity controlled by Richard R. Miller, which funds were transferred subsequently to the bank account of Lake Resources in Geneva, Switzerland, at the direction of the defendant NORTH.

(14) In September 1985, in Vienna, Virginia, the defendants OLIVER L. NORTH and RICHARD V. SECORD met with William Haskell, a/k/a "Robert Olmsted."

(15) In October 1985, the defendants OLIVER L. NORTH and RICHARD V. SECORD caused William Haskell, a/k/a "Robert Olmsted," to meet with a United States official in San Jose, Costa Rica.

(16) On October 7, 1985, in Washington, D.C., the defendant OLIVER L. NORTH caused certain misrepresentations to be made in an enclosure to a letter sent to the Chairman of the House of Representatives Permanent Select Committee on Intelligence.

(17) On October 17, 1985, at the OEOB, Washington, D.C., the defendant OLIVER L. NORTH presented a briefing relating to Nicaragua for prospective contributors to NEPL.

(18) On or about November 1, 1985, in Washington, D.C., the defendant OLIVER L. NORTH caused Richard R. Miller to transfer $150,000 in NEPL funds from the bank account of I.C. Inc. in the Cayman Islands to the bank account of Lake Resources in Geneva, Switzerland.

(19) From November 20, 1985 to November 22, 1985, in Washington, D.C., the defendant OLIVER L. NORTH sent a series of messages to the defendant JOHN M. POINDEXTER with respect to the shipment of Hawk missiles to Iran.

(20) In late November 1985, the defendant OLIVER L. NORTH caused $1 million to be received in connection with the shipment of Hawk missiles to Iran to be deposited into the bank account of Lake Resources in Geneva, Switzerland.

(21) On November 21, 1985, at the OEOB, Washington, D.C., the defendant OLIVER L. NORTH presented a briefing relating to Nicaragua for prospective contributors to NEPL.

(22) In December 1985, the defendant RICHARD V. SECORD caused thousands of pounds of lethal military supplies to be transported from Lisbon, Portugal, to an airfield in Country A.

(23) On December 9, 1985, in Washington, D.C., the defendant OLIVER L. NORTH prepared a memorandum for the defendant JOHN M. POINDEXTER suggesting the possibility of

using the defendant RICHARD V. SECORD to transport weapons in connection with a United States initiative to Iran.

(24) On or about December 16, 1985, in Washington, D.C., the defendant OLIVER L. NORTH caused Richard R. Miller to transfer $300,000 in NEPL funds from the bank account of IBC in Washington, D.C., to the bank account of Lake Resources in Geneva, Switzerland.

(25) In January 1986, the defendant OLIVER L. NORTH prepared a memorandum for the defendant JOHN M. POINDEXTER to the President in which the defendant POINDEXTER would seek the President's approval for a United States initiative to Iran.

(26) On January 15, 1986, in Washington, D.C., the defendant OLIVER L. NORTH sent messages to the defendant JOHN M. POINDEXTER advising him, among other things, that a representative of Iran had offered to pay to the United States $10,000 per TOW missile.

(27) On January 17, 1986, in Washington, D.C., the defendant JOHN M. POINDEXTER met with the defendant RICHARD V. SECORD.

(28) On January 20, 1986, in Washington, D.C., the defendants JOHN M. POINDEXTER, OLIVER L. NORTH and RICHARD V. SECORD met with officials of the CIA.

(29) On or about January 21, 1986, in Washington, D.C., the defendant OLIVER L. NORTH caused Richard R. Miller to transfer $360,000 in NEPL funds from the bank account of I.C.

Inc. in the Cayman Islands to the bank account of Lake Resources in Geneva, Switzerland.

(30) Beginning in January 1986, in Washington, D.C., the defendant OLIVER L. NORTH obtained certain secure communications devices belonging to an intelligence agency of the United States Government.

(31) In January or February 1986, in San Jose, Costa Rica, the defendant OLIVER L. NORTH caused a secure communications device to be delivered to a United States official assigned to Costa Rica to be used by the official in assisting the Contras.

(32) On January 22, 1986, in London, England, the defendants OLIVER L. NORTH and RICHARD V. SECORD met with a representative of Iran to discuss, among other things, the price of TOW missiles to be sold to elements in Iran.

(33) In late January 1986, in Washington, D.C., the defendant OLIVER L. NORTH discussed the price of TOW missiles with an official of the CIA.

(34) On February 7-10, 1986, the defendants OLIVER L. NORTH and RICHARD V. SECORD caused $10 million for the purchase of 1,000 TOW missiles by elements in Iran from the United States to be deposited into the bank account of Lake Resources in Geneva, Switzerland.

(35) On February 10-11, 1986, the defendants OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM caused $3.7 million to be transmitted from the bank account of Lake

Resources in Geneva, Switzerland, to a bank account of the CIA for 1,000 TOW missiles purchased on behalf of Iran from the United States.

(36) During the last half of February 1986, in Washington, D.C., the defendants JOHN M. POINDEXTER, OLIVER L. NORTH and RICHARD V. SECORD caused 1,000 TOW missiles to be shipped from the United States to Iran.

(37) On or about February 25-26, 1986, in Frankfurt, Federal Republic of Germany, with the knowledge and approval of the defendant JOHN M. POINDEXTER, the defendants OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM, acting as representatives of the United States Government, met with representatives of Iran and a representative of Israel to discuss the sale of United States arms to elements in Iran and other aspects of the Iran initiative.

(38) In March 1986, the defendant RICHARD V. SECORD caused thousands of pounds of lethal military supplies to be shipped from Lisbon, Portugal, to Central America.

(39) On March 27, 1986, at the OEOB, Washington, D.C., the defendant OLIVER L. NORTH presented a briefing relating to Nicaragua for prospective contributors to NEPL.

(40) On or about April 4-7, 1986, in Washington, D.C., the defendant OLIVER L. NORTH wrote a memorandum to the defendant JOHN M. POINDEXTER discussing the diversion to the Contras of proceeds from the sale of arms to elements in Iran.

(41) On or about April 11, 1986, the defendant OLIVER L. NORTH caused Richard R. Miller to transfer $650,000 in NEPL funds from the bank account of I.C. Inc. in the Cayman Islands to the bank account of Lake Resources in Geneva, Switzerland.

(42) On or about April 11-12, 1986, in San Jose, Costa Rica, an official of the United States assisted in the delivery of weapons and supplies to the Contras' southern front.

(43) On April 12, 1986, in Washington, D.C., the defendant OLIVER L. NORTH received a message sent by a secure communications device from an official of the United States in Costa Rica identifying military objectives for the Contras' southern front.

(44) In April 1986, the defendant RICHARD V. SECORD caused thousands of pounds of lethal military supplies to be shipped from Lisbon, Portugal, to an airfield in Country A.

(45) On May 14, 1986, the defendants RICHARD V. SECORD and ALBERT HAKIM received $10 million for the purchase of Hawk missile spare parts by Iran from the United States, deposited into the bank account of Lake Resources in Geneva, Switzerland.

(46) On May 14, 1986, the defendants RICHARD V. SECORD and ALBERT HAKIM caused $10 million to be transferred from the bank account of Lake Resources in Geneva, Switzerland, to the bank account of Hyde Park Square Corp. in Geneva, Switzerland.

(47) On May 15, 1986, the defendants OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM caused $6.5 million to be transmitted from the bank account of Hyde Park Square Corp. in Geneva, Switzerland, to a bank account of the CIA.

(48) On May 16, 1986, the defendants RICHARD V. SECORD and ALBERT HAKIM received $1.46 million deposited into the bank account of Lake Resources in Geneva, Switzerland.

(49) On May 16, 1986, the defendants RICHARD V. SECORD and ALBERT HAKIM received $5 million for the purchase of Hawk missile spare parts by elements in Iran from the United States, deposited into the bank account of Lake Resources in Geneva, Switzerland.

(50) On May 16, 1986, in Washington, D.C., the defendant OLIVER L. NORTH sent a message to the defendant JOHN M. POINDEXTER advising him that $6 million was available for immediate disbursement on behalf of the Contras.

(51) In late May 1986, the defendants JOHN M. POINDEXTER, OLIVER L. NORTH and RICHARD V. SECORD caused hundreds of Hawk missile spare parts and 508 TOW missiles to be shipped from San Antonio, Texas, for delivery to Iran and Israel, respectively.

(52) In late May 1986, the defendant RICHARD V. SECORD caused thousands of pounds of lethal military supplies to be shipped from Lisbon, Portugal, to an airfield in Country A.

(53) In June 1986, in Washington, D.C., the defendant OLIVER L. NORTH directed that the bank account number of Lake Resources be provided to an official of the Department of State.

(54) On July 21, 1986, in Washington, D.C., the defendant JOHN M. POINDEXTER caused letters to be sent to the Chairmen of the House of Representatives Committees on Foreign Affairs and Armed Services and the House of Representatives Permanent Select Committee on Intelligence.

(55) On July 29, 1986, the defendant OLIVER L. NORTH wrote a memorandum to the defendant JOHN M. POINDEXTER recommending that the defendant POINDEXTER obtain the President's approval for the shipment of Hawk missile spare parts which had not yet been delivered to Iran.

(56) On August 6, 1986, in Washington, D.C., the defendant OLIVER L. NORTH made representations to the House of Representatives Permanent Select Committee on Intelligence.

(57) On August 11, 1986, in Washington, D.C., the defendant JOHN M. POINDEXTER, having been advised of representations made by the defendant OLIVER L. NORTH in his August 6, 1986 meeting with the House of Representatives Permanent Select Committee on Intelligence, sent a message to the defendant NORTH stating, "Well done."

(58) In September 1986, the defendants OLIVER L. NORTH and RICHARD V. SECORD caused approximately six deliveries of lethal supplies to the Contras' southern front.

(59) On September 19-20, 1986, in Washington, D.C., and elsewhere, with the knowledge and approval of the defendant JOHN M. POINDEXTER, the defendants OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM, acting as representatives of the United States Government, met with representatives of Iran to discuss the sale of United States weapons to elements in Iran and other aspects of the Iran initiative.

(60) On October 6-8, 1986, in Frankfurt, Federal Republic of West Germany, with the knowledge and approval of defendant JOHN M. POINDEXTER, the defendants OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM, acting as representatives of the United States Government, met with representatives of Iran to discuss the sale of United States weapons to elements in Iran and other aspects of the Iran initiative.

(61) On October 27-30, 1986, in Mainz, Federal Republic of Germany, the defendants OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM, acting as representatives of the United States Government, met with representatives of Iran to discuss the sale of United States weapons to elements in Iran and other aspects of the Iran initiative.

(62) On October 29, 1986, the defendants RICHARD V. SECORD and ALBERT HAKIM received $3.6 million for the purchase of 500 TOW missiles by Iran from the United States, deposited into the bank account of Hyde Park Square Corp. in Geneva, Switzerland.

(63) On October 29, 1986, the defendants OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM caused $2.037 million to be transmitted from the bank account of Hyde Park Square Corp. in Geneva, Switzerland, to a bank account of the CIA for 500 TOW missiles purchased by Iran from the United States.

(64) In October and November 1986, the defendants JOHN M. POINDEXTER, OLIVER L. NORTH and RICHARD V. SECORD caused 500 TOW missiles to be shipped to Iran.

(65) On or about November 6, 1986, in Geneva, Switzerland, the defendants OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM, acting as representatives of the United States Government, met with representatives of Iran to discuss the sale of United States weapons to Iran and other aspects of the Iran initiative.

(66) Between November 7, 1986 and November 20, 1986, in Washington, D.C., the defendants JOHN M. POINDEXTER and OLIVER L. NORTH participated in the preparation of a chronology of events relevant to the shipment of arms to Iran for use in testimony and appearances by officials of the Executive Branch before congressional committees.

(67) On November 21, 1986, in Washington, D.C., the defendant JOHN M. POINDEXTER made representations to the House of Representatives Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence.

(68) In November 1986, in Washington, D.C., the defendant OLIVER L. NORTH removed, altered, destroyed and

caused to be removed, altered and destroyed certain documents and other records of the NSC and its staff.

(69) On November 23, 1986, in Washington, D.C., the defendant OLIVER L. NORTH made representations to the Attorney General and other officials of the Department of Justice.

(70) Between November 22, 1986 and November 29, 1986, in Washington, D.C., the defendant JOHN M. POINDEXTER deleted from his file in the memory of one of the NSC computer systems all the stored messages contained in that system that had been sent or received by the defendant POINDEXTER.

(Violation of Title 18, United States Code, Section 371.)

COUNT TWO

(Theft of Government Property by POINDEXTER, NORTH, SECORD and HAKIM)

The Grand Jury further charges:

1. Paragraphs 1 through 12 and 35 through 52 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. From late 1985 to November 1986, in the District of Columbia and elsewhere, the defendants JOHN M. POINDEXTER, OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM unlawfully, willfully and knowingly did embezzle, steal and convert to their own use and the use of others, and without authority did dispose of, money and things of value of the United States and a department and agency thereof, with a value of more than $100, to wit, the defendants deceitfully and improperly generated and diverted part of the proceeds of the transfer of United States weapons to Iran, and diverted part of the realizable value of such weapons, for purposes unauthorized by law, including the provision of support for military and paramilitary operations in Nicaragua by the Contras, all of which was done by the defendants notwithstanding a written finding by the President which authorized the transfer of United States weapons to Iran only for the purposes of the Iran initiative as enumerated in the finding.

(Violation of Title 18, United States Code, Sections 641 and 2.)

COUNT THREE

(Wire Fraud by POINDEXTER, NORTH, SECORD and HAKIM: Diversion of Proceeds of Sale of Arms to Iran)

The Grand Jury further charges:

1. Paragraphs 1 through 12 and 35 through 52 of Count One of this Indictment are repeated, realleged and incorporated by reference herein as though fully set forth at length.

2. From late 1985 to November 1986, in the District of Columbia and elsewhere, the defendants JOHN M. POINDEXTER, OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM, and others known and unknown to the Grand Jury, unlawfully, willfully and knowingly did devise and intend to devise a scheme and artifice to defraud the United States and to obtain money and property by means of false and fraudulent pretenses, representations and promises and did execute and aid and abet the execution of this scheme and artifice to defraud.

3. It was a part of this scheme and artifice that the defendants and those acting in concert with them deceptively and improperly used the influence and position of the defendants JOHN M. POINDEXTER and OLIVER L. NORTH to generate funds, including funds from the sale by the Government of the United States of arms to elements in Iran, for the defendants RICHARD V. SECORD and ALBERT HAKIM with the understanding that the defendants SECORD and HAKIM would, in turn, without governmental accountability place at the disposal of the

defendants POINDEXTER and NORTH a portion of those funds for activities designated by the defendants POINDEXTER and NORTH, including the support of military and paramilitary operations in Nicaragua by the Contras.

4. It was a further part of this scheme and artifice that the defendants and those acting in concert with them deceitfully and improperly, in the implementation of the Iran initiative, generated and diverted part of the proceeds of the transfer of United States weapons to Iran, and diverted part of the realizable value of such weapons, for purposes unauthorized by law, including the provision of support for military and paramilitary operations in Nicaragua by the Contras.

5. It was a further part of this scheme and artifice that the defendants and those acting in concert with them exploited for their own purposes and corrupted a United States Government initiative involving the sale of arms to elements in Iran, rather than pursuing solely the specified governmental objectives of the initiative, including the release of Americans being held hostage in Lebanon.

6. From late 1985 to November 1986, in the District of Columbia and elsewhere, the defendants JOHN M. POINDEXTER, OLIVER L. NORTH, RICHARD V. SECORD and ALBERT HAKIM unlawfully, willfully and knowingly, for the purpose of executing and attempting to execute the above-described scheme and artifice, did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, certain

writings, signs, signals, pictures and sounds, to wit, numerous wire transfers of funds into and out of the bank accounts of Lake Resources and Hyde Park Square Corp. in Geneva, Switzerland, certain secure communications transmissions between Washington, D.C., and elsewhere, and certain telephone communications between Washington, D.C., and elsewhere.

(Violation of Title 18, United States Code, Sections 1343 and 2.)

COUNT FOUR

(Obstruction of Congress by NORTH in September and October 1985)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. On August 16 and 20, 1985, after the publication of reports in the press alleging improper and illegal activities on behalf of the Contras by members of the NSC staff, the Chairman of the House of Representatives Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Affairs and the Chairman of the House of Representatives Permanent Select Committee on Intelligence ("HPSCI") each wrote letters on behalf of their Committees to Robert C. McFarlane in McFarlane's capacity as National Security Advisor.

3. On or before September 5 and 12, 1985, the defendant OLIVER L. NORTH prepared responses to those letters which Robert C. McFarlane signed and transmitted in response to the Chairmen of the Committees.

4. On September 12, 1985, the Chairman of HPSCI, acting on behalf of the Committee, wrote another letter to McFarlane that enclosed additional written questions, submitted by members of the Committee, about the activities of the defendant OLIVER L. NORTH in support of the Contras.

5. On or before October 7, 1985, the defendant OLIVER L. NORTH prepared responses to the Committee's questions for Robert C. McFarlane to transmit to the Chairman of HPSCI and which McFarlane did in fact transmit.

6. In September and October 1985, in the District of Columbia, the defendant OLIVER L. NORTH unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry under which inquiries and investigations were being had by committees of Congress, to wit, HPSCI and the House of Representatives Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Affairs, into the participation of the NSC in the provision of aid and assistance to the Contras, by making and causing to be made false, fictitious, fraudulent and misleading statements and representations, as set forth more fully and underscored in Counts Five through Seven of this Indictment, for the purpose of concealing and causing to be concealed material facts.

(Violation of Title 18, United States Code, Sections 1505 and 2.)

COUNT FIVE

(False Statements by NORTH on September 5, 1985)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One and Paragraphs 2 through 5 of Count Four of this Indictment are repeated, realleged and incorporated by reference herein as if fully set forth in this Count.

2. On August 20, 1985, the Chairman of the House of Representatives Permanent Select Committee on Intelligence ("HPSCI") wrote a letter on behalf of the Committee to Robert C. McFarlane in McFarlane's capacity as National Security Advisor. The letter referred to press accounts of alleged activities by the NSC with respect to the Contras and requested, among other things, a full report on the activities of the NSC to support the Contras after the enactment of the Boland Amendment.

3. On or before September 5, 1985, the defendant OLIVER L. NORTH prepared a response for Robert C. McFarlane to transmit to the Chairman of HPSCI and which McFarlane did in substance transmit.

4. On or about September 5, 1985, in the District of Columbia, the defendant OLIVER L. NORTH unlawfully, willfully and knowingly did make and cause to be made material false, fictitious and fraudulent statements and representations, as underscored below, to a department and agency of the United

States, to wit, HPSCI, a committee of Congress, in a matter within its jurisdiction, to wit, intelligence aspects of United States policy and activities in Nicaragua, as follows:

> This is in reply to your letter of August 20, 1985 in which you called attention to press reports of "... alleged activities by the National Security Council (staff) regarding the contras in Nicaragua ..." and asked for a full report and legal justification for any such activities. Like you, I take such charges very seriously and consequently have thoroughly examined the facts and all matters which in any remote fashion could bear upon these charges. From that review I can state with deep personal conviction that at no time did I or any member of the National Security Council staff violate the letter or spirit of the law....
>
> * * *
>
> It is equally important to stress what we did not do. We did not solicit funds or other support for military or paramilitary activities either from Americans or third parties. We did not offer tactical advice for the conduct of their military activities or their organization....

5. The underscored statements and representations were false, fictitious and fraudulent because in truth and in fact, as the defendant OLIVER L. NORTH then and there well knew and believed, among other things, the defendant NORTH and others at the NSC had solicited funds and other support for military and paramilitary activities of the Contras from Americans and third parties and had offered tactical advice for the conduct of the Contras' military activities and organization, including advice related to the destruction of helicopters, the placement in the field of Contra units, the opening of a southern front, and the creation of a new logistical operation to support the Contras.

(Violation of Title 18, United States Code, Sections 1001 and 2.)

COUNT SIX

(False Statements by NORTH on September 12, 1985)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One and Paragraphs 2 through 5 of Count Four of this Indictment are repeated, realleged and incorporated by reference herein as if fully set forth in this Count.

2. On August 16, 1985, the Chairman of the House of Representatives Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Affairs wrote a letter, on behalf of the Subcommittee, to Robert C. McFarlane in McFarlane's capacity as National Security Advisor. The letter referred to "press reports detailing the activities of certain National Security Council staff members in providing advice and fundraising support to Nicaraguan rebel leaders" and requested "all information, including memoranda and any other documents, pertaining to any contact between Lt. Col. North and Nicaraguan rebel leaders as of enactment of the Boland Amendment in October, 1984."

3. On or before September 12, 1985, the defendant OLIVER L. NORTH prepared a response for Robert C. McFarlane to transmit to the Chairman of the Subcommittee and which McFarlane did in fact transmit.

4. On or about September 12, 1985, in the District of Columbia, the defendant OLIVER L. NORTH unlawfully, willfully and knowingly did make and cause to be made material false, fictitious and fraudulent statements and representations, as underscored below, to a department and agency of the United States, to wit, the House of Representatives Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Affairs, a subcommittee of Congress, in a matter within its jurisdiction, to wit, United States policy toward Nicaragua, as follows:

> This is in reply to your letter of August 16, regarding the activities of members of the NSC staff in connection with the Nicaraguan democratic resistance. Like you, I take these charges very seriously and consequently have thoroughly examined the facts and circumstances which could bear upon these charges in any fashion.
>
> Based on this review, I want to assure you that my actions, and those of my staff, have been in compliance with both the spirit and the letter of the law....
>
> * * *
>
> Throughout, we have scrupulously abided by the spirit and the letter of the law. None of us has solicited funds, facilitated contacts for prospective potential donors, or otherwise organized or coordinated the military or paramilitary efforts of the resistance.
>
> * * *
>
> Mr. Chairman, like you, I am most concerned that at a time when humanitarian assistance is being extended to the UNO there be no misgivings as to the existence of any parallel efforts to provide, directly or indirectly, support for military or paramilitary activities in Nicaragua. There has not been, nor will there be, any such activities by the NSC staff....

5. The underscored statements and representations were false, fictitious and fraudulent because in truth and in fact, as the defendant OLIVER L. NORTH then and there well knew and believed, among other things, the defendant NORTH and others at the NSC had solicited funds from and facilitated contacts for prospective potential donors, including contributors to NEPL, had otherwise organized and coordinated the military and paramilitary efforts of the Contras by participating in plans to open a southern front and to create a new logistical operation to transport lethal weapons and supplies to the Contras, and had provided, directly and indirectly, support for military and paramilitary activities in Nicaragua.

(Violation of Title 18, United States Code, Sections 1001 and 2.)

COUNT SEVEN

(False Statements by NORTH
on October 7, 1985)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One and Paragraphs 2 through 5 of Count Four of this Indictment are repeated, realleged and incorporated by reference herein as if fully set forth in this Count.

2. On September 12, 1985, having received the letter referred to in Count Five of this Indictment and having met with Robert C. McFarlane, the Chairman of HPSCI wrote another letter, on behalf of the Committee, to McFarlane enclosing a series of questions "concerning allegations about the activities of Lieutenant Colonel Oliver North."

3. On or before October 7, 1985, the defendant OLIVER L. NORTH prepared responses to the Committee's questions for Robert C. McFarlane to transmit to the Chairman of HPSCI and which McFarlane did in fact transmit.

4. On or about October 7, 1985, in the District of Columbia, the defendant OLIVER L. NORTH unlawfully, willfully and knowingly did make and cause to be made material false, fictitious and fraudulent statements and representations, as underscored below, to a department and agency of the United States, to wit, HPSCI, a committee of Congress, in a matter within its jurisdiction, to wit, intelligence aspects of United States policy and activities in Nicaragua, as follows:

(a) Q-- When the CIA had to withdraw from their day-to-day contact with the rebels, it has been alleged in the New York Times (8 Aug 85) that Colonel North tried to fill the void, partly through helping facilitate the supplying of logistics help. Did Colonel North, in his capacity as a staff member of the National Security Council, use his influence to facilitate the movement of supplies, either raised privately in this country or otherwise, to the contras?

A-- Lieutenant Colonel North did not use his influence to facilitate the movement of supplies to the resistance.

The underscored answer was false, fictitious and fraudulent because in truth and in fact, as the defendant NORTH then and there well knew and believed, among other things, the defendant NORTH had used his influence to facilitate the movement of supplies to the resistance, including encouraging the government of a foreign country ("Country B") to permit the export of anti-aircraft missiles to the Contras, encouraging the provision of increased United States aid to a foreign country ("Country C"), officials of which had provided false end-user certificates for military equipment for the Contras, encouraging the government of a foreign country ("Country D") to provide a multiple-entry visa for John K. Singlaub, writing a letter to Felix Rodriguez, a/k/a "Max Gomez," and participating in plans to open a southern front, build an airstrip in Costa Rica and create a new logistical operation to transport supplies to the Contras.

(b) Q-- Has Colonel North been the focal point within the NSC staff for handling contacts with private fund raising groups, such as the World Anti-Communist League and the Council for World Freedom headed by retired Major General John K. Singlaub?

A-- No.

The underscored answer was false, fictitious and fraudulent because in truth and in fact, as the defendant NORTH then and there well knew and believed, among other things, the defendant NORTH had been the focal point within the NSC staff for handling contacts with private groups raising funds for lethal military purposes, including the National Endowment for the Preservation of Liberty ("NEPL"), the United States Council for World Freedom, and the World Anti-Communist League.

(c) Q-- General Singlaub has stated (Washington Post, 9 Aug 85) that he would often talk to Colonel North and inform him what he was doing and then state that if it was a dumb idea, for North to send him a signal. Is that your impression of the relationship between General Singlaub and Colonel North?

A-- There is no official or unofficial relationship with any member of the NSC staff regarding fund raising for the Nicaraguan democratic opposition. This includes the alleged relationship with General Singlaub.

The underscored answer was false, fictitious and fraudulent because in truth and in fact, as the defendant NORTH then and there well knew and believed, among other things, the defendant NORTH had relationships regarding fund raising for the Contras with John K. Singlaub, NEPL and individuals

associated with NEPL, including Carl R. Channell, Richard R. Miller and Daniel L. Conrad.

(d) Q-- The Nicaraguan freedom fighters, in the last two months, are reported by the U.S. Embassy, Tegucigalpa, to have received a large influx of funds and equipment with some estimates of their value reaching as high as $10 million or more. Do you know where they have obtained this assistance?

A-- No.

The underscored answer was false, fictitious and fraudulent because in truth and in fact, as the defendant NORTH then and there well knew and believed, among other things, the Contras had received as a result, in part, of efforts by the defendant NORTH, military equipment worth millions of dollars through John K. Singlaub and Richard V. Secord.

(Violation of Title 18, United States Code, Sections 1001 and 2.)

COUNT EIGHT

(Obstruction of Congress by POINDEXTER in July and August 1986)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One of this Indictment are repeated, realleged and incorporated by reference herein as if fully set forth at length.

2. On June 24, 1986, a resolution of inquiry, H. Res. 485, was introduced in the House of Representatives which, if adopted, would have directed the President to provide the House of Representatives certain information concerning the activities of Oliver L. North or any other member of the NSC staff in support of the Contras, including a complete list and description of any contact or other communication between North or any other member of the NSC staff with any private individual or any representative of a foreign government concerning the provision of funding or other assistance to the Contras, any document concerning the provision of such funding or assistance, and a complete list and description of and any document concerning any contact or other communication, directly or through intermediaries, since July 28, 1983, between North or any other member of the NSC staff and any representative of the Contras, Robert W. Owen or John K. Singlaub. The resolution then was referred jointly to the House Committee on Foreign Affairs, the House Committee on

Armed Services and the House Permanent Select Committee on Intelligence ("HPSCI") for consideration.

3. On June 25 and July 1, 1986, the Chairmen of the House Committee on Foreign Affairs and HPSCI each wrote a letter, on behalf of his Committee, to the President attaching a copy of the proposed resolution of inquiry and requesting comments on the proposed resolution no later than July 22, 1986.

4. On July 21, 1986, the defendant JOHN M. POINDEXTER, on behalf of the President, wrote separate letters to the Chairmen of the House Committees on Foreign Affairs and Armed Services and HPSCI in which he expressed the Administration's strong opposition to the proposed resolution of inquiry.

5. The defendant JOHN M. POINDEXTER's letters to the Chairmen of the House Committee on Foreign Affairs and the Permanent Select Committee on Intelligence were identical in substance and stated as follows:

> This is in reply to your letter to the President on June 25, 1986, requesting comments on H. Res. 485, relating to the allegations of improper activities by members of the National Security Council staff in support of the Nicaraguan resistance. The Administration strongly opposes enactment of the resolution.
>
> Last fall, in an effort to cooperate with Chairman Barnes, my predecessor, Robert C. McFarlane, met with members of your committee and the Permanent Select Committee on Intelligence. While I did not participate in these discussions, I understand that information on the specific issues raised in H. Res. 485, was provided to your Committee and that this information made it clear that the actions of the National Security Council staff were in compliance

with both the spirit and letter of the law regarding support of the Nicaraguan resistance.

Thank you for the opportunity to comment on H. Res. 485. I have forwarded similar letters to Chairman Hamilton and Chairman Aspin and sincerely hope this matter can finally be put to rest.

6. The defendant JOHN M. POINDEXTER's letter to the Chairman of the House Committee on Armed Services attached copies of the other two letters and stated as follows:

I am writing to oppose H. Res. 485, a resolution of inquiry concerning allegations of improper activities of members of the staff of the National Security Council in support of the Nicaraguan resistance.

I understand the resolution has been referred jointly to your committee, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence.

Attached for your information is a copy of the response provided to the Committee on Foreign Affairs which, along with the Intelligence Committee, requested comment.

Considerable information provided by this office exists in both committees, which answered all questions in some detail. You may wish to review that information to satisfy yourself that actions by the National Security Council staff have been and continue to be within the spirit as well as the letter of the law.

7. The three letters were false, fictitious, fraudulent and misleading because in truth and in fact, as the defendant POINDEXTER then and there well knew and believed, among other things, the 1985 letters and submissions were false and would not have been a truthful response to the 1986 inquiries.

8. In connection with the proposed resolution of inquiry, after the Chairman of HPSCI received the defendant JOHN M. POINDEXTER's letter, he requested, on behalf of the Committee, the opportunity to meet with and ask questions of Oliver L. North. On August 6, 1986, in accordance with arrangements made and approved by the defendant POINDEXTER, North met in the Situation Room of the White House with members and staff of HPSCI to answer questions concerning his activities with respect to the Contras and his contacts with Robert W. Owen and John K. Singlaub.

9. In the course of that meeting, Oliver L. North made certain false, fictitious, fraudulent, and misleading statements and representations intended to obstruct the Committee's inquiry as follows: that North had not given military advice to the Contras, had no knowledge of any specific military action conducted by the Contras, had not had contact with John K. Singlaub for the previous twenty months, had not raised funds in support of the Contras, had not advised or guided Robert W. Owen with respect to the Contras, and had only casual contact with Owen.

10. On August 11, 1986, after Oliver L. North's meeting with members and staff of HPSCI and after having been advised of statements made by North in the course of the meeting, the defendant JOHN M. POINDEXTER sent a message to North which stated, "Well done," notwithstanding that as the defendant POINDEXTER then and there well knew and believed the statements

and representations of North were false, fictitious, fraudulent and misleading.

11. From July 21, 1986 to August 6, 1986, in the District of Columbia, the defendant JOHN M. POINDEXTER unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry under which inquiries and investigations were being had by committees of Congress, to wit, the consideration of a proposed resolution of inquiry by HPSCI and the House of Representatives Committees on Foreign Affairs and Armed Services, by making and causing to be made false, fictitious, fraudulent and misleading statements and representations to those committees of Congress for the purpose of concealing and causing to be concealed material facts.

(Violation of Title 18, United States Code, Sections 1505 and 2.)

COUNT NINE

(Obstruction of Congress by NORTH in August 1986)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One and Paragraphs 2 through 7 of Count Eight of this Indictment are repeated, realleged and incorporated by reference herein as if fully set forth at length.

2. In connection with the proposed resolution of inquiry, after the Chairman of HPSCI received John M. Poindexter's letter, he requested, on behalf of the Committee, the opportunity to meet with and ask questions of the defendant OLIVER L. NORTH. On August 6, 1986, in accordance with arrangements made and approved by Poindexter, the defendant NORTH met in the Situation Room of the White House with members and staff of HPSCI to answer questions concerning his activities with respect to the Contras and his contacts with Robert W. Owen and John K. Singlaub.

3. In the course of that meeting, the defendant OLIVER L. NORTH made certain false, fictitious, fraudulent, and misleading statements and representations intended to obstruct the Committee's inquiry as follows: that the defendant NORTH had not given military advice to the Contras, had no knowledge of any specific military action conducted by the Contras, had not had contact with John K. Singlaub for the previous twenty months, had not raised funds in support of the Contras, had not

advised or guided Robert W. Owen with respect to the Contras, and had only casual contact with Owen.

4. Those statements and representations were false, fictitious, fraudulent, and misleading because in truth and in fact, as the defendant OLIVER L. NORTH then and there well knew and believed, among other things, the defendant NORTH had given military advice to the Contras, had knowledge of specific military actions conducted by the Contras, had had contact with John K. Singlaub within the previous twenty months, had raised funds in support of the Contras, had advised and guided Robert W. Owen with respect to the Contras, and had had frequent contact with Owen.

5. On August 6, 1986, in the District of Columbia, the defendant OLIVER L. NORTH unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry under which inquiries and investigations were being had by committees of Congress, to wit, the consideration of a proposed resolution of inquiry by HPSCI and the House of Representatives Committees on Foreign Affairs and Armed Services, by making and causing to be made false, fictitious, fraudulent and misleading statements and representations to those committees of Congress for the purpose of concealing and causing to be concealed material facts.

(Violation of Title 18, United States Code, Section 1505.)

COUNT TEN

(Obstruction of Congress by POINDEXTER in November 1986)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. In early November 1986, reports appeared in the foreign and domestic press that the United States Government had participated in the shipment of arms to Iran.

3. Following those reports, committees of Congress, including the House of Representatives Permanent Select Committee on Intelligence ("HPSCI") and the Senate Select Committee on Intelligence ("SSCI"), requested that certain officials of the Executive Branch, including the defendant JOHN M. POINDEXTER and William J. Casey, the Director of Central Intelligence, appear before the committees concerning the participation of the United States Government in the shipment of arms to Iran.

4. During November 1986, in preparation for the appearances of the defendant JOHN M. POINDEXTER and the Director of Central Intelligence before HPSCI and SSCI, the defendant POINDEXTER participated in the preparation of a false and misleading chronology of events relating to United States Government knowledge of and involvement in the sale of arms to Iran, which, in its final version, falsely and misleadingly

stated that no official of the United States Government learned before January 1986 that Hawk missiles had been shipped to Iran in November 1985.

5. On November 21, 1986, in the White House Situation Room, the defendant JOHN M. POINDEXTER appeared before HPSCI and made false, fictitious, fraudulent and misleading statements and representations, as follows: that the defendant POINDEXTER did not learn until January 1986 that Hawk missiles had been shipped to Iran in November 1985 and that the defendant POINDEXTER had not learned until November 20, 1986 that anyone in the United States Government had prior knowledge of the shipment of Hawk missiles to Iran in November 1985.

6. On November 21, 1986, the defendant JOHN M. POINDEXTER appeared before the Chairman and Vice Chairman of SSCI, acting on behalf of the Committee, and made a false, fictitious, fraudulent and misleading statement and representation, as follows: that the defendant POINDEXTER had not learned until January 1986 that Hawk missiles had been shipped to Iran in November 1985.

7. The statements and representations made by the defendant JOHN M. POINDEXTER to HPSCI and SSCI were false, fictitious, fraudulent and misleading because in truth and in fact, as the defendant POINDEXTER then and there well knew and believed, among other things, the defendant POINDEXTER was advised by Oliver L. North, at least as early as November 20, 1985, in advance of the shipment of Hawk missiles to Iran,

that such a shipment was about to take place and was further advised by North, in late November and December 1985, that a shipment of Hawk missiles had, indeed, been transported to Iran.

8. Between November 22, 1986 and November 29, 1986, the defendant JOHN M. POINDEXTER deleted from his file in the memory of one of the NSC computer systems all the stored messages contained in that system that had been sent or received by the defendant POINDEXTER.

9. From early November 1986 to November 24, 1986, in the District of Columbia, the defendant JOHN M. POINDEXTER unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry under which inquiries and investigations were being had by committees of Congress, to wit, HPSCI and SSCI, into the participation of the United States Government in the shipment of arms to Iran by participating in the preparation of a false and misleading chronology of events, making and causing to be made false, fictitious, fraudulent and misleading statements and representations to those committees of Congress, and deleting messages from the NSC computer system, all for the purpose of concealing and causing to be concealed material facts.

(Violation of Title 18, United States Code, Sections 1505 and 2.)

COUNT ELEVEN

(False Statements by POINDEXTER on November 21, 1986)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One and Paragraphs 2 and 3 of Count Ten of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. On November 21, 1986, in the District of Columbia, the defendant JOHN M. POINDEXTER unlawfully, willfully and knowingly made and caused to be made material false, fictitious and fraudulent statements and representations to a department and agency of the United States, to wit, HPSCI, a committee of Congress, in a matter within its jurisdiction, to wit, intelligence aspects of United States Government participation in the sale of arms to Iran, as follows: that the defendant POINDEXTER did not learn until January 1986 that Hawk missiles had been shipped to Iran in November 1985 and that the defendant POINDEXTER had not learned until November 20, 1986 that anyone in the United States Government had prior knowledge of the shipment of Hawk missiles to Iran in November 1985.

3. Those statements and representations were false, fictitious and fraudulent because in truth and in fact, as the defendant JOHN M. POINDEXTER then and there well knew and believed, among other things, the defendant POINDEXTER was advised by Oliver L. North, at least as early as November 20, 1985, in advance of the shipment of Hawk missiles to Iran, that

such a shipment was about to take place and was further advised by North, in late November and December 1985, that a shipment of Hawk missiles had, indeed, been transported to Iran.

(Violation of Title 18, United States Code, Section 1001.)

COUNT TWELVE

(False Statement by POINDEXTER on November 21, 1986)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One and Paragraphs 2 and 3 of Count Ten of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. On November 21, 1986, in the District of Columbia, the defendant JOHN M. POINDEXTER unlawfully, willfully, and knowingly made and caused to be made a material false, fictitious and fraudulent statement and representation to a department and agency of the United States, to wit, the Senate Select Committee on Intelligence, a committee of Congress, in a matter within its jurisdiction, to wit, intelligence aspects of United States Government participation in the sale of arms to Iran, as follows: that the defendant POINDEXTER had not learned until January 1986 that Hawk missiles had been shipped to Iran in November 1985.

3. That statement and representation was false, fictitious and fraudulent because in truth and in fact, as the defendant POINDEXTER then and there well knew and believed, among other things, in November and December 1985 the defendant

POINDEXTER was advised by Oliver L. North that such a shipment was about to take place and was further advised by North that a shipment had, indeed, been transported to Iran.

(Violation of Title 18, United States Code, Section 1001.)

COUNT THIRTEEN

(Obstruction of Congress by NORTH in November 1986)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count

2. In early November 1986, reports appeared in the foreign and domestic press concerning the participation of the United States Government in the sale of arms to Iran.

3. On or about November 14, 1986, the Senate Select Committee on Intelligence ("SSCI") and the House of Representatives Permanent Select Committee on Intelligence ("HPSCI") gave notice to the CIA and other Executive Branch agencies and entities that the committees would be conducting hearings to inquire into the involvement of United States Government officials in the sale of arms to Iran and that the Director of Central Intelligence as well as other Executive branch officials, including John M. Poindexter, were requested to appear before the respective committees on November 21, 1986.

4. During November 1986, in preparation for the appearance of John M. Poindexter and the Director of Central Intelligence before SSCI and HPSCI, the defendant OLIVER L. NORTH participated in the preparation of a false and misleading chronology of events relating to United States Government

knowledge of and involvement in the shipment of arms to Iran, which, in its final version, falsely and misleadingly stated that no official of the United States Government learned before January 1986 that Hawk missiles had been shipped to Iran in November 1985.

5. From approximately November 21, 1986 to approximately November 25, 1986, the defendant OLIVER L. NORTH and others acting at his direction altered, destroyed, concealed and removed documents, records and papers of the NSC and its staff concerning the provision of aid and assistance to the Contras and the sale of arms to Iran.

6. From early November 1986 to on or about November 25, 1986, in the District of Columbia, the defendant OLIVER L. NORTH unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry under which inquiries and investigations were being had by committees of Congress, including the Senate Select Committee on Intelligence, the House of Representatives Permanent Select Committee on Intelligence and the House of Representatives Committee on Foreign Affairs, into the provision of aid and assistance to the Contras and the participation of the United States Government in the shipment of arms to Iran, by participating in the preparation of a false and misleading chronology of events and altering, destroying, concealing and removing documents, records and papers of the

NSC and its staff, all for the purpose of concealing and causing to be concealed material facts.

(Violation of Title 18, United States Code, Sections 1505 and 2.)

COUNT FOURTEEN

(Obstruction of a Presidential Inquiry by NORTH in November 1986)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count

2. In early November 1986, reports appeared in the foreign and domestic press concerning the participation of the United States Government in the sale of arms to Iran.

3. On or about November 14, 1986, the Senate Select Committee on Intelligence ("SSCI") and the House of Representatives Permanent Select Committee on Intelligence ("HPSCI") gave notice to the CIA and other Executive Branch agencies and entities that the committees would be conducting hearings to inquire into the involvement of United States Government officials in the sale of arms to Iran and that the Director of Central Intelligence as well as other Executive branch officials, including John M. Poindexter, were requested to appear before the respective committees on November 21, 1986.

4. On November 21, 1986, the President directed the Attorney General to conduct a fact-finding inquiry to determine in advance of further congressional testimony by officials of the Executive Branch the involvement of the United States

Government and its officers and employees in the shipment of arms to Iran.

5. On November 23, 1986, at the request of the Attorney General, whose subordinates at that time had discovered, in the course of the fact-finding inquiry for the President, a document at the NSC suggesting that proceeds of the sale of arms to Iran by the United States had been diverted to the Contras, the defendant OLIVER L. NORTH met at the Department of Justice with the Attorney General and other officials of the Department of Justice to answer questions with respect to the inquiry.

6. During the course of that meeting, the defendant OLIVER L. NORTH made false, fictitious, fraudulent and misleading statements and representations to the Attorney General, as follows: that the NSC had no involvement in the diversion to the Contras of the proceeds from the sale of arms to Iran; that the Israelis determined how much of the proceeds from the arms sales were diverted to the Contras; and that the defendant NORTH had advised Adolfo Calero to open bank accounts in Switzerland to receive the monies from Israel diverted from the sale of arms to Iran.

7. Those statements and representations were false, fictitious, fraudulent and misleading because in truth and in fact, as the defendant OLIVER L. NORTH then and there well knew and believed, among other things, the defendant NORTH and others at the NSC had undertaken activities intended to

generate a differential between the price paid by Iran for the arms and the price paid to the United States Government for those arms so that monies were available to be diverted to the Contras, the diverted monies were transferred to and disbursed from bank accounts controlled by the defendant NORTH and others acting in concert with him rather than bank accounts controlled by Adolfo Calero or the Contras, and the defendant NORTH had not advised Adolfo Calero to open Swiss bank accounts to receive proceeds from the sale of arms to Iran.

8. From approximately November 21, 1986 to approximately November 25, 1986, the defendant OLIVER L. NORTH and others acting at his direction altered, destroyed, concealed and removed documents, records and papers of the NSC and its staff concerning the provision of aid and assistance to the Contras and the sale of arms to Iran.

9. From early November 1986 to on or about November 25, 1986, in the District of Columbia, the defendant OLIVER L. NORTH unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper administration of the law under which a pending proceeding was being had before a department and agency of the United States, to wit, the Attorney General's conduct of a fact-finding inquiry at the direction of the President into the participation of the United States Government in the shipment of arms to Iran, by making false, fictitious, fraudulent and misleading statements and

representations to the Attorney General and altering, destroying, concealing and removing documents, records and papers of the NSC and its staff, all for the purpose of concealing and causing to be concealed material facts.

(Violation of Title 18, United States Code, Sections 1505 and 2.)

COUNT FIFTEEN

(False Statements by NORTH on November 23, 1986)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One and Paragraphs 2 through 4 of Count Fourteen of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. On November 23, 1986, at the request of the Attorney General, whose subordinates at that time had discovered a document at the NSC suggesting that proceeds of the sale of arms to elements in Iran by the United States had been diverted to the Contras, the defendant OLIVER L. NORTH met at the Department of Justice with the Attorney General and other officials of the Department of Justice to answer questions with respect to the inquiry.

3. On November 23, 1986, in the District of Columbia, the defendant OLIVER L. NORTH unlawfully, willfully and knowingly made and caused to be made material false, fictitious and fraudulent statements and representations to a department and agency of the United States, to wit, the Attorney General acting on behalf of the President, in a matter within its jurisdiction, to wit, a fact-finding inquiry to determine in advance of further congressional testimony of officials of the Executive Branch the involvement of the United States Government in the sale of arms to elements in Iran, as follows:

that the NSC had no involvement in the diversion to the Contras of the proceeds from the sale of arms to elements in Iran; that the Israelis determined how much of the proceeds from the arms sales were diverted to the Contras; and that the defendant NORTH had advised Adolfo Calero to open bank accounts in Switzerland to receive the monies from Israel diverted from the sale of arms to elements in Iran.

4. Those statements and representations were false, fictitious and fraudulent because in truth and in fact, as the defendant OLIVER L. NORTH then and there well knew and believed, among other things, the defendant NORTH and others at the NSC had undertaken activities intended to generate a differential between the price paid on behalf of elements in Iran for the arms and the price transmitted to the United States Government for those arms so that monies were available to be diverted to the Contras, the diverted monies were transferred to and disbursed from bank accounts controlled by the Enterprise rather than bank accounts controlled by Adolfo Calero or the Contras, and the defendant NORTH had not advised Adolfo Calero to open Swiss bank accounts to receive proceeds from the sale of arms to elements in Iran.

(Violation of Title 18, United States Code, Section 1001.)

COUNT SIXTEEN

(Concealing, Removing, Mutilating, Obliterating, Falsifying and Destroying Official Documents by NORTH)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. The NSC, as an entity of the Executive Branch, published and disseminated to its staff an Administrative Manual that set forth procedures to ensure that documentary materials received or developed by an employee, detailee or consultant during his tenure on the NSC staff were treated as official records and were neither removed nor destroyed. To this end, the NSC Secretariat maintained a three-tiered system of records management that logged, tracked and controlled the dissemination of documents received or created at the NSC. The regulations of the NSC required that the originals of classified and logged documents be deposited and maintained in the central files of the NSC Secretariat.

3. Between approximately the middle of November 1986 and approximately November 25, 1986, in the District of Columbia, the defendant OLIVER L. NORTH, having custody of records, papers and documents of the NSC, unlawfully, willfully and knowingly did conceal, remove, mutilate, obliterate, falsify and destroy and did cause to be concealed, removed, mutilated, obliterated, falsified and destroyed records, papers and

documents filed and deposited in a public office, to wit, records of the NSC and its staff, including but not limited to original logged and classified documents from the central files of the NSC Secretariat, concerning the provision of aid and assistance to the Contras and the sale of arms to elements in Iran.

(Violation of Title 18, United States Code, Sections 2071(b) and 2.)

COUNT SEVENTEEN

(Conspiracy by SECORD and HAKIM to Pay Illegal Gratuities to North)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. At all times relevant to this Indictment, Willard Zucker was a United States citizen working in Geneva, Switzerland, who managed bank accounts and financial matters for the defendants RICHARD V. SECORD and ALBERT HAKIM through an entity known as Compagnie de Services Fiduciaires S.A. ("CSF").

3. From approximately late 1985 to approximately the end of 1986, in the District of Columbia and elsewhere, the defendants RICHARD V. SECORD and ALBERT HAKIM, and others known and unknown to the Grand Jury, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, the offering, promising and paying of illegal gratuities to Oliver L. North, a United States Government official, in violation of Title 18, United States Code, Section 201(f)(recodified effective December 10, 1986 as Title 18, United States Code, Section 201(c)(1)(A)).

4. It was an object of the conspiracy to offer, promise and give things of value to Oliver L. North and his family to

encourage North to continue in his position on the staff of the NSC so that the defendants RICHARD V. SECORD and ALBERT HAKIM would continue to receive opportunities for substantial revenues and profits in connection with lucrative activities referred to them by North and facilitated by him, in his official capacity, including activities related to the support of military and paramilitary operations in Nicaragua by the Contras and activities related to the government-sponsored Iran initiative.

5. It was a further object of the conspiracy to conceal and cover up the conspirators' efforts to provide Oliver L. North with things of value.

OVERT ACTS

6. The following overt acts, among others, were knowingly committed and caused to be committed, in the District of Columbia and elsewhere, by the defendants RICHARD V. SECORD and ALBERT HAKIM and their co-conspirators in furtherance of the conspiracy and to effect the objects thereof:

(1) On March 6, 1986, in Philadelphia, Pennsylvania, Willard Zucker met with Oliver L. North's wife, Elizabeth North.

(2) On May 5, 1986, at the OEOB in Washington, D.C., the defendant RICHARD V. SECORD met with Oliver L. North and an individual named Glenn Robinette.

(3) On May 10, 1986, at the offices of STTGI in Vienna, Virginia, the defendant RICHARD V. SECORD met with Oliver L. North and Glenn Robinette.

(4) On May 14, 1986, in Geneva, Switzerland, the defendant ALBERT HAKIM met with Willard Zucker.

(5) On May 20, 1986, in Geneva, Switzerland, the defendant ALBERT HAKIM caused an investment account in the name of "B. Button" funded in the amount of $200,000 to be opened and maintained at CSF.

(6) On or about May 20, 1986, in Vienna, Virginia, the defendant RICHARD V. SECORD gave $7,000 in cash to Glenn Robinette.

(7) In May and June 1986, in Great Falls, Virginia, Glenn Robinette caused a security system to be installed at the residence of Oliver L. North.

(8) On June 4, 1986, in Philadelphia, Pennsylvania, Willard Zucker placed a telephone call to Elizabeth North in Great Falls, Virginia.

(9) On August 20, 1986, the defendant RICHARD V. SECORD caused a check to be issued in New York, New York, to the order of Glenn Robinette in the amount of $9,000.

(10) In the late summer or early fall of 1986, in Washington, D.C., David Lewis, an attorney, received a telephone call from Willard Zucker.

(11) On October 9 and 10, 1986, in Geneva, Switzerland, Willard Zucker met with David Lewis.

(12) In December 1986, in Washington, D.C., Glenn Robinette sent two letters in one envelope to Oliver L. North.

(13) In December 1986, in Vienna, Virginia, the defendant RICHARD V. SECORD met with Glenn Robinette.

(Violation of Title 18, United States Code, Section 371.)

COUNT EIGHTEEN

(Offer of an Illegal Gratuity by SECORD and HAKIM to North: Financial Assistance for Education of North's Children)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. During the first half of 1986, in the District of Columbia and elsewhere, the defendants RICHARD V. SECORD and ALBERT HAKIM unlawfully, willfully, knowingly and otherwise than provided by law for the proper discharge of official duty, directly and indirectly, did give, offer and promise to Oliver L. North, a United States Government official, a thing of value, to wit, financial assistance for the education of North's children, for or because of official acts performed and to be performed by North, to wit, the referral by North of activities to the defendants SECORD and HAKIM and the facilitation by North of those activities, in his official capacity, including activities related to the support of military and paramilitary operations in Nicaragua by the Contras and the government-sponsored Iran initiative.

(Violation of Title 18, United States Code, Sections 201(f)(recodified effective December 10, 1986 as Title 18, United States Code, Section 201 (c)(1)(A)) and 2.)

COUNT NINETEEN

(Payment of an Illegal Gratuity by SECORD to North: The Security System)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. In the spring and summer of 1986, in the District of Columbia and elsewhere, the defendant RICHARD V. SECORD unlawfully, willfully, knowingly and otherwise than provided by law for the proper discharge of official duty, directly and indirectly, did give, offer and promise a thing of value, to wit, a security system valued at approximately $13,800, to Oliver L. North, a United States Government official, for or because of official acts performed and to be performed by North, to wit, the referral by North of activities to the defendant SECORD and Albert Hakim and the facilitation by North of those activities, in his official capacity, including activities related to the support of military and paramilitary operations in Nicaragua by the Contras and the government-sponsored Iran initiative.

(Violation of Title 18, United States Code, Sections 201(f)(recodified effective December 10, 1986 as Title 18, United States Code, Section 201 (c)(1)(A)) and 2.)

COUNT TWENTY

(Receipt of an Illegal Gratuity by NORTH from Secord: The Security System)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. In the spring and summer of 1986, in the District of Columbia and elsewhere, the defendant OLIVER L. NORTH, a United States Government official, unlawfully, willfully and knowingly and otherwise than as provided by law for the proper discharge of official duty, directly and indirectly, did accept, receive and agree to receive a thing of value personally and for himself, to wit, a security system at his residence valued at approximately $13,800, from Richard V. Secord, for and because of official acts performed and to be performed by the defendant NORTH in his official capacity, to wit, the referral by the defendant NORTH of activities to Secord and Albert Hakim and his facilitation of those activities, including activities related to the support of military and paramilitary operations in Nicaragua by the Contras and the government-sponsored Iran initiative.

(Violation of Title 18, United States Code, Sections 201(g)(recodified effective December 10, 1986 as Title 18, United States Code, Section 201(c)(1)(B)) and 2.)

COUNT TWENTY-ONE

(Obstruction of Justice by NORTH: The Security System)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. In December 1986, in the District of Columbia and elsewhere, the defendant OLIVER L. NORTH unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due administration of justice, to wit, the defendant NORTH, in anticipation of and during an investigation by the Federal Bureau of Investigation, the Independent Counsel and the grand jury, created and caused to be created false and fraudulent documents relating to the defendant NORTH's receipt of a security system, in order to conceal and cover up the true circumstances surrounding the defendant NORTH's receipt of the security system and the fact that the security system was provided to the defendant NORTH by Richard V. Secord as an illegal gratuity.

(Violation of Title 18, United States Code, Sections 1503 and 2.)

COUNT TWENTY-TWO

(Conversion of Traveler's Checks by NORTH)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. From in or about February 1985 to in or about August 1985, the defendant OLIVER L. NORTH received in excess of $90,000 in traveler's checks from Adolfo Calero, a leader of the Contras, on the representation and understanding that the traveler's checks would be used to support efforts to obtain the release of American citizens held hostage in Lebanon and for Contra-related expenses.

3. From April 1985 to July 1986, the defendant OLIVER L. NORTH used and caused to be used at least $4,300 of those traveler's checks for his own personal purposes and expenditures.

4. From April 1985 to July 1986, in the District of Columbia and elsewhere, the defendant OLIVER L. NORTH, being an employee of the United States, unlawfully, willfully and knowingly embezzled and wrongfully converted to his own use the money or property of another, to wit, approximately $4,300 in traveler's checks the defendant NORTH received from Adolfo Calero, which came into his possession and under his control in

the execution of his public office and under color and claim of his authority as an employee of the NSC.

(Violation of Title 18, United States Code, Section 654.)

COUNT TWENTY-THREE

(Conspiracy by NORTH and Others to Defraud the United States, the Department of the Treasury and the IRS)

The Grand Jury further charges:

1. Paragraphs 1 through 12 of Count One of this Indictment are repeated, realleged and incorporated by reference herein as though fully set forth at length.

INTRODUCTION

2. At all times relevant to this Indictment, the National Endowment for the Preservation of Liberty ("NEPL") was a corporation established under the non-profit corporation law of the District of Columbia. On December 12, 1984, the United States Internal Revenue Service (the "IRS") had granted NEPL an exemption from federal income taxation, pursuant to Section 501(c)(3) of the Internal Revenue Code, thereby permitting NEPL to solicit and obtain contributions that could be taken as charitable deductions on its contributors' federal income tax returns, pursuant to Section 170(a)(1) of the Internal Revenue Code. The granting of that exemption by the IRS was based, in part, on the representation by NEPL in its application for the exemption and in its supporting materials that it was organized, operated and to be operated exclusively as a non-profit, educational and charitable organization devoted to the study, analysis and evaluation of the American socio-economic and political system and that contributions to NEPL would be

used solely for those purposes. At all times relevant to this Indictment, Carl R. Channell was the President of NEPL and its chief operating officer, and Daniel L. Conrad was the Executive Director of NEPL and functioned as Channell's deputy.

3. At all times relevant to this Indictment, International Business Communications ("IBC") was a public relations firm located in Washington, D.C., and Richard R. Miller was a principal of IBC.

THE CONSPIRACY AND ITS OBJECTS

4. From the spring or summer of 1985 to the date of the filing of this Indictment, in the District of Columbia and elsewhere, the defendant OLIVER L. NORTH, and others known and unknown to the Grand Jury, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together and with each other to defraud the United States of America, the Treasury of the United States and the IRS by impeding, impairing, defeating and obstructing the lawful governmental functions of the IRS in the ascertainment, evaluation, assessment and collection of income taxes.

5. It was an object of the conspiracy to defraud and deprive the IRS and the Treasury of the United States of revenue to which it was entitled by using NEPL, an organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code and applicable regulations, for an improper purpose, namely, to solicit contributions to purchase

military and other types of non-humanitarian aid for the Contras.

6. It was a further object of the conspiracy to defraud and deprive the IRS and the Treasury of the United States of revenue to which it was entitled by inducing contributors to contribute monies to NEPL on the false representation that such contributions would be tax-deductible when, in truth and in fact, such contributions were not deductible since they were to be used for a non-exempt, non-deductible purpose, namely, to purchase military and other types of non-humanitarian aid for the Contras.

7. It was a further object of the conspiracy to have the Treasury of the United States subsidize the purchase of military and other types of non-humanitarian aid in support of military and paramilitary operations by the Contras by raising money for such aid through purportedly tax-deductible contributions to NEPL at a time when the prohibitions of the Boland Amendment were in effect.

THE MEANS OF THE CONSPIRACY

8. In the spring of 1985, in order to support military and paramilitary activities in Nicaragua by the Contras, the defendant OLIVER L. NORTH began raising money through NEPL. He and his co-conspirators arranged for NEPL to sponsor briefings concerning the status of the war in Nicaragua and the needs of the Contras for groups of prospective contributors to NEPL at

the White House and the OEOB. Following these briefings the defendant NORTH and his co-conspirators held meetings at the Hay-Adams Hotel, Washington, D.C., at which prospective contributors to NEPL were directly solicited to make purportedly tax-deductible contributions to NEPL for financial and other material aid to the Contras.

9. The conspirators also arranged, as a further means of inducing contributions to NEPL for the Contras, private meetings between prospective contributors and the defendant OLIVER L. NORTH at the defendant NORTH's office in the OEOB, at the Hay-Adams Hotel, and elsewhere, at which the defendant NORTH provided briefings to contributors explaining the military and paramilitary needs of the Contras. Prior to some of these private briefings, the defendant NORTH was advised by his co-conspirators of the amount of money that would be solicited from a particular contributor immediately following the private meeting. These private briefings included, from time to time, a discussion by the defendant NORTH of the need for money for aircraft and specific lethal military weapons and equipment and the cost of each specific item. At the time of these private briefings, the defendant NORTH well knew that the contributors to whom he provided these private briefings would be solicited directly thereafter by his co-conspirators for contributions to purchase the specified aircraft and lethal military weapons and equipment and other items.

10. Immediately following these private briefings by the defendant OLIVER L. NORTH, officers, employees and associates of NEPL, including Carl R. Channell and others, solicited purportedly tax-deductible contributions from prospective contributors to NEPL, based on the specific needs and costs described to the contributors by the defendant NORTH.

11. The defendant OLIVER L. NORTH traveled outside of Washington, D.C., to meet prospective contributors to NEPL and discuss the specific military and paramilitary needs of the Contras.

12. The defendant OLIVER L. NORTH prepared and helped prepare lists of military and other needs of the Contras to be used in solicitations of prospective NEPL contributors. The defendant NORTH provided to his co-conspirators the prices of specific military weapons, including SAM-7 missiles, Blowpipe missiles and C-4 plastic explosives, and other equipment, including aircraft, so that prospective NEPL contributors could be solicited to help purchase those items.

13. The defendant OLIVER L. NORTH thanked in person and by telephone individuals who had made contributions to NEPL to support the military and paramilitary operations of the Contras. The defendant NORTH also wrote acknowledgements on official NSC stationery to contributors to NEPL thanking them for their support for the Contras. In addition, the conspirators and others arranged for a number of individuals who had made substantial contributions to the Contras through

NEPL to have White House meetings and photograph opportunities with the President.

14. From the fall of 1985 to December 1986, the defendant OLIVER L. NORTH controlled the disposition of funds raised for the Contras by NEPL.

15. In order to disguise the fact that NEPL, a 501(c)(3) organization, was the source of monies to purchase military and other types of non-humanitarian aid for the Contras, and in order to conceal the role of the defendant OLIVER L. NORTH in controlling the distribution of the funds raised through NEPL, the conspirators arranged for such monies to be transferred from NEPL to IBC and then to foreign corporate bank accounts in the Cayman Islands and Switzerland controlled by the defendant NORTH before they were distributed to the ultimate recipients. Between approximately June 1, 1985 and November 25, 1986, at direction of the defendant NORTH, NEPL transferred approximately $3.2 million to IBC to aid the Contras, of which approximately $1.7 million was transferred at the direction of the defendant NORTH to the bank account of Lake Resources.

16. From the $3.2 million raised through NEPL purportedly for the Contras by the defendant OLIVER L. NORTH and his co-conspirators, the defendant NORTH directed that the following expenditures be made: over $200,000 for the benefit of Mousalreza Abrahim Zadeh, a/k/a "Prince Al-Masoudi," $75,000 for the Institute for Terrorism and Subnational Conflict to provide employment for the defendant NORTH's associate, Robert

W. Owen, and $450,000 for World Affairs Counselors, Inc., an entity in the Cayman Islands controlled by Richard R. Miller, for the personal benefit of Miller and Francis D. Gomez in compensation for their assistance to the defendant NORTH in raising funds for the defendant NORTH and transferring those funds through foreign and domestic bank accounts.

OVERT ACTS

17. The following overt acts, among others, were knowingly committed and caused to be committed, in the District of Columbia and elsewhere, by the defendant OLIVER L. NORTH and his co-conspirators in furtherance of the conspiracy and to effect the objects thereof:

(1) In late May or early June 1985, in Washington, D.C., the defendant OLIVER L. NORTH placed a telephone call to Richard R. Miller requesting funds for the Contras.

(2) In June 1985, the defendant OLIVER L. NORTH and Richard R. Miller caused John Ramsey, a contributor to NEPL, to transfer $10,000 by wire from Wichita Falls, Texas, to a Contra bank account.

(3) On June 27, 1985, at the OEOB, Washington, D.C., the defendant OLIVER L. NORTH presented a briefing relating to Nicaragua for prospective contributors to NEPL.

(4) On July 9, 1985, at the Hay-Adams Hotel, Washington, D.C., the defendant OLIVER L. NORTH met with Carl R. Channell, Daniel L. Conrad and Richard R. Miller.

(5) On September 11, 1985, in Dallas, Texas, the defendant OLIVER L. NORTH met with Carl R. Channell, Daniel L. Conrad and Nelson Bunker Hunt, a contributor to NEPL.

(6) On September 17, 1985, in Dallas, Texas, the defendant OLIVER L. NORTH, Carl Channell and Daniel L. Conrad caused Nelson Bunker Hunt to issue a check in the amount of $237,500 payable to NEPL.

(7) On September 20, 1985, in Washington, D.C., the defendant OLIVER L. NORTH caused Richard Miller to transfer $130,000 in NEPL funds from the bank account of IBC in Washington, D.C., to the bank account of Lake Resources in Geneva, Switzerland.

(8) On September 26, 1985, in Washington, D.C., the defendant OLIVER L. NORTH caused Richard R. Miller to transfer $100,000 in NEPL funds from IBC to the bank account in the Cayman Islands of I.C. Inc., an entity controlled by Richard R. Miller, which funds were transferred subsequently to the bank account of Lake Resources in Geneva, Switzerland, at the direction of the defendant NORTH.

(9) On October 17, 1985, at the OEOB, Washington, D.C., the defendant OLIVER L. NORTH presented a briefing relating to Nicaragua for prospective contributors to NEPL.

(10) On October 18, 1985, at the OEOB, Washington, D.C., the defendant OLIVER L. NORTH met with Carl R. Channell and Patricia D. Beck, a contributor to NEPL.

(11) On October 18, 1985, in Washington, D.C., the defendant OLIVER L. NORTH and Carl R. Channell caused Patricia D. Beck to issue a check payable to NEPL in the amount of $44,000.

(12) On or about November 1, 1985, in Washington, D.C., the defendant OLIVER L. NORTH caused Richard R. Miller to transfer $150,000 in NEPL funds from the bank account of I.C. Inc. in the Cayman Islands to the bank account of Lake Resources in Geneva, Switzerland.

(13) On November 7, 1985, at the Hay-Adams Hotel, Washington, D.C., the defendant OLIVER L. NORTH met with Carl R. Channell, Richard R. Miller and Barbara Newington, a contributor to NEPL.

(14) In late November and early December 1985, the defendant OLIVER L. NORTH, Carl R. Channell and Richard R. Miller caused Barbara Newington to mail stock certificates valued at approximately $1 million to NEPL in Washington, D.C.

(15) On November 21, 1985, at the OEOB, Washington, D.C., the defendant OLIVER L. NORTH presented a briefing relating to Nicaragua for prospective contributors to NEPL.

(16) On November 22, 1985, at the OEOB, Washington, D.C., the defendant OLIVER L. NORTH met with C. Thomas Clagett, Jr., a contributor to NEPL.

(17) On December 16, 1985, in Washington, D.C., the defendant OLIVER L. NORTH caused Richard R. Miller to transfer $300,000 in NEPL funds from the bank account of IBC in

Washington, D.C., to the bank account of Lake Resources in Geneva, Switzerland.

(18) On January 16, 1986, in Washington, D.C., the defendant OLIVER L. NORTH and Carl R. Channell caused C. Thomas Clagett, Jr., to issue a check in amount of $20,000 payable to NEPL.

(19) On or about January 21, 1986, in Washington, D.C., the defendant OLIVER L. NORTH caused Richard R. Miller to transfer $360,000 in NEPL funds from the bank account of I.C. Inc. in the Cayman Islands to the bank account of Lake Resources in Geneva, Switzerland.

(20) On March 27, 1986, at the OEOB, Washington, D.C., the defendant OLIVER L. NORTH presented a briefing relating to Nicaragua for prospective contributors to NEPL.

(21) On March 28, 1986, at the Hay-Adams Hotel, Washington, D.C., the defendant OLIVER L. NORTH met with Carl R. Channell and William O'Boyle, a contributor to NEPL.

(22) On March 31, 1986, at the Hay-Adams Hotel, Washington, D.C., the defendant OLIVER L. NORTH and Carl R. Channell caused William O'Boyle to deliver a check in the amount of $130,000 payable to NEPL.

(23) On April 11, 1986, at the Hay-Adams Hotel, Washington, D.C., the defendant OLIVER L. NORTH met with Carl R. Channell and Ellen Garwood, a contributor to NEPL.

(24) On April 11, 1986, the defendant OLIVER L. NORTH caused Richard R. Miller to transfer $650,000 in NEPL funds

from the bank account of I.C. Inc. in the Cayman Islands to the bank account of Lake Resources in Geneva, Switzerland.

(25) On April 15, 1986, the defendant OLIVER L. NORTH and Carl R. Channell caused Ellen Garwood to transfer by wire $470,000 from a bank account in Austin, Texas, to a NEPL bank account in Washington, D.C.

(26) On April 15, 1986, the defendant OLIVER L. NORTH and Carl R. Channell caused Ellen Garwood to transfer by wire stocks valued at approximately $1.15 million from Austin, Texas, to NEPL's brokerage account in Washington, D.C.

(27) On May 19, 1986, the defendant OLIVER L. NORTH and Carl R. Channell caused Ellen Garwood to transfer by wire $350,000 from a bank account in Austin, Texas, to a NEPL bank account in Washington, D.C.

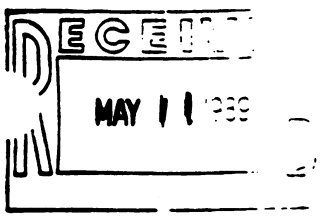
(Violation of Title 18, United States Code, Section 371.)

A TRUE BILL:

FOREPERSON

16 March 1988

LAWRENCE E. WALSH
INDEPENDENT COUNSEL



[redacted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on December 1, 1987

UNITED STATES OF AMERICA	)	Criminal No. 89-0110
	)	
v.	)	Grand Jury Original
	)	
RICHARD V. SECORD,	)	Violations:
	)	18 U.S.C. § 1505;
Defendant.	)	18 U.S.C. § 1621;
	)	18 U.S.C. § 1001.
	)	(UNDER SEAL)

INDICTMENT

FILED IN OPEN COURT
APR 07 1989
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

The Grand Jury charges:

COUNT I

1. At all times material to this Indictment:

a. The 100th Congress of the United States conducted an investigation into the Iran/Contra affair. On January 6, 1987, the United States Senate, by Senate Resolution 23, established the Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition. On January 7, 1987, the United States House of Representatives, by House Resolution 12, established the Select Committee to Investigate Covert Arms Transactions with Iran. The two Chambers instructed their respective Committees (hereinafter, the "Select Committees") to work together and charged them with investigating four major areas:

(1) arms sales to Iran;

(2) the possible diversion of funds to aid the Contras;

(3) violations of federal law; and

(4) the involvement of the National Security Council staff in the conduct of foreign policy.

b. From 1955 until 1983, the Defendant, RICHARD V. SECORD, served in the United States Air Force, where he attained the rank of Major General. In May 1983, the Defendant, RICHARD V. SECORD, retired from active duty in the Air Force and became President of Stanford Technology Trading Group International ("STTGI"), a corporation jointly owned by the Defendant, RICHARD V. SECORD, and his partner, Albert Hakim, with offices located in Vienna, Virginia. Beginning in the fall of 1984, the Defendant, RICHARD V. SECORD, undertook to provide supplies, including lethal military supplies, to insurgents opposing the government of Nicaragua known as the Contras. Beginning in the fall of 1985, the Defendant, RICHARD V. SECORD, also undertook to assist in the transfer of weapons to Iran on behalf of the United States.

c. The "Enterprise" was the operation by which the Defendant, RICHARD V. SECORD, and others supported military and paramilitary operations in Nicaragua by the Contras, provided arms to Iran and conducted other covert operations. A component of the Enterprise was a clandestine financial

infrastructure comprised of foreign corporations with Swiss bank accounts through which over $47 million was received, managed and disbursed. The Enterprise employed a Swiss company, Compagnie de Services Fiduciaires ("CSF"), managed by Willard Zucker, to establish and maintain this financial infrastructure.

2. As part of the Congressional investigation, the Select Committees held joint hearings into the Iran/Contra affair and examined, among other things:

a. how monies were generated, received and spent by the Enterprise;

b. whether and to what extent any individuals personally profited and sought to profit from their involvement with the Enterprise; and

c. the financial structure of the Enterprise, including how, when and why Enterprise accounts and companies were opened, utilized and terminated.

3. It was material to the Select Committees' investigation to determine:

a. what monies from the Enterprise went to the personal benefit of the individuals involved with the Enterprise;

b. whether or not the accounts of the Enterprise were used in part as a slush fund, that is, a fund without accountability to the United States Government, by and for the benefit of those involved with the Enterprise; and

c. whether or not those individuals involved with the Enterprise sought to and did manipulate the accounts and companies of the Enterprise so as to disguise and conceal their economic interests in the Enterprise.

4. From on or about May 1, 1987 and continuing through November 5, 1987, in the District of Columbia, Defendant RICHARD V. SECORD, acting unlawfully, willfully and knowingly, did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry under which the Select Committees of both Houses of Congress were investigating the Iran/Contra affair, in that during the aforesaid period of time, Defendant RICHARD V. SECORD did impede and endeavored to impede the Select Committees from learning the true facts about the finances of the Enterprise and his relationship to those finances by providing false, evasive, and misleading evidence to the Select Committees, including but not limited to the false statements set forth in Counts Two through Nine of this Indictment, for the purpose of obstructing and impeding and endeavoring to obstruct and impede the Congressional investigation by preventing the Select Committees from obtaining complete, truthful and relevant evidence.

(In violation of Title 18, United States Code, Section 1505)

COUNT II

(Korel)

1. Paragraphs one through three of Count I of the Indictment are realleged and incorporated as if set forth in full herein.

2. On or about May 7, 1987, in the District of Columbia, the Defendant, RICHARD V. SECORD, having duly taken an oath that he would testify truthfully in proceedings before properly authorized Committees of the United States Congress, did willfully and contrary to said oath make false material declarations as hereinafter set forth.

3. It was material to the Select Committees' investigation described in paragraph 1.a. of Count I of this Indictment to determine whether the Defendant, RICHARD V. SECORD, used a foreign company named Korel Assets Inc., otherwise known as Korel, to receive personal profits from the Enterprise.

4. At the time and place set forth on paragraph 2 of this Count, the Defendant, RICHARD V. SECORD, appearing as a witness under oath before the Select Committees, was asked the following questions and gave the following answers, knowing the underscored material declarations to be false:

MR. LIMAN. Now, would you tell us what your share of the profit was from these sales of arms to Calero?

MR. SECORD. As I testified earlier, the amount is several hundred thousand dollars. And checking the records of Mr. Hakim that you have showed me, I haven't been able to put a precise number on it.

MR. LIMAN. Is it your claim that you did not know at the time how much money you were making?

MR. SECORD. I did not know the exact amount. I didn't concern myself with it.

MR. LIMAN. You never asked Hakim?

MR. SECORD. He kept me advised in a general way, but I did not have a precise number.

MR. LIMAN. Well, within a general way, did he tell you whether it was five hundred thousand, four hundred, eight hundred?

MR. SECORD. In a general way ... in a general way, I just told you Mr. Liman, several hundred thousand dollars. That's a very clear answer.

MR. LIMAN. What does several hundred thousand mean to you?

MR. SECORD. I cannot be more specific.

MR. LIMAN. You weren't more specific with him?

MR. SECORD. No.

MR. LIMAN. You weren't concerned about what the amount of money was?

MR. SECORD. Not particularly.

MR. LIMAN. The money was a matter of indifference to you?

MR. GREEN. Why are you arguing with him? He has answered the question.

MR. LIMAN. Was the money a matter of indifference to you?

MR. SECORD. It was a matter of little concern to me at the time. I was busy with a lot of big problems. I couldn't worry about that.

MR. LIMAN. Is it a fact, Mr. Secord, that the amount that you had credited to your capital account was about $400,000?

MR. SECORD. I don't know. It was an amount of several hundred thousand dollars. And I don't think that we can determine from the records what that was. We tried the other day to do that.

MR. LIMAN. Was it kept for you under a pseudonym in Switzerland?

MR. SECORD. No. Under my name.

MR. LIMAN. Did you use the name Korel, K-o-r-e-l?

MR. SECORD. No.

MR. LIMAN. Did you ever hear the name Korel?

MR. SECORD. Yes. That's one of the companies that Hakim organized.

MR. LIMAN. Did you have any interest in Korel?

MR. SECORD. Korel was not my company.

MR. LIMAN. Did you have any interest in Korel?

MR. SECORD. Any more so than the other companies? No.

MR. LIMAN. Did you have any interest in Korel?

MR. SECORD. I've just answered the question.

MR. LIMAN. You said any more than in the other companies. What was your interest ...

MR. SECORD. I had interest in all the companies.

MR. LIMAN. And what was your interest in Korel?

MR. SECORD. No specific interest in Korel.

MR. LIMAN. Was it 10 percent, 20 percent, 50 percent?

MR. SECORD. I didn't have any percentage interest in Korel. I don't know what you're getting at.

MR. LIMAN. But you had an interest in it, but it wasn't translated into a percentage?

MR. SECORD. No. Absolutely not.

MR. LIMAN. Then what was the nature of your interest in it?

MR. SECORD. The same as the other companies.

MR. LIMAN. Are you saying that you had an undefined interest in Korel and the other companies?

MR. SECORD. That's correct. I had a profit-sharing arrangement with Mr. Hakim as I described to you earlier and that was the limit of my interest.

MR. LIMAN. And that profit-sharing agreement or arrangement was 50 percent?

MR. SECORD. That's correct.

5. The underscored segments of material declarations made under oath before the Select Committees by the Defendant, RICHARD V. SECORD, as set forth in paragraph 4 of this Count, as the Defendant, RICHARD V. SECORD, then and there well knew, were false in that:

a. the Defendant, RICHARD V. SECORD, was the principal shareholder of Korel Assets Inc.;

b. profits from the Enterprise were kept for the Defendant, RICHARD V. SECORD, in the Korel account; and

c. the Korel account, unlike the other Enterprise accounts, was set aside for the personal use of RICHARD V. SECORD.

(In violation of Title 18, United States Code, Section 1621.)

COUNT III

(Waiver of Profits)

1. Paragraphs one through three of Count I of the Indictment are realleged and incorporated as if set forth in full herein.

2. On or about May 7 and May 8, 1987, in the District of Columbia, the Defendant, RICHARD V. SECORD, having duly taken an oath that he would testify truthfully in proceedings before properly authorized Committees of the United States Congress, did willfully and contrary to said oath make false material declarations as hereinafter set forth.

3. It was material to the Select Committees' investigation described in paragraph 1.a. of Count I of this Indictment:

a. to determine the extent of the interest of the Defendant, RICHARD V. SECORD, in the Enterprise's profits; and

b. to determine whether or not the Defendant, RICHARD V. SECORD, waived his interest in the profits of the Enterprise.

4. At the time and place set forth on paragraph 2 of this Count, the Defendant, RICHARD V. SECORD, appearing as a witness under oath before the Select Committees, was asked the following questions and gave the following answers, knowing the underscored material declarations to be false:

MR. LIMAN. Now, is it your testimony that in July or August of 1985, you waived all interest in profits?

MR. SECORD. I testified to that earlier, yes.

MR. LIMAN. And is that the fact?

MR. SECORD. Of course it's the fact or I wouldn't have testified to it.

MR. LIMAN. And is it a fact that you then no longer had any interest whatsoever in Lake or Energy or any of those other companies?

MR. SECORD. Profit Interest? No.

MR. LIMAN. Is it--when you say no, you had no interest?

MR. SECORD. No profit interest.

MR. LIMAN. Did you have some other economic interest in those companies?

MR. SECORD. Of course. They had to remain viable or the projects couldn't go on.

MR. LIMAN. Well, what was the nature of your economic interests in those companies?

MR. SECORD. My personal economic interest?

MR. LIMAN. Yes, sir.

MR. SECORD. None.

MR. LIMAN. Did you have some economic interest other than a personal one?

MR. SECORD. Yes. The enterprise had to remain viable or we would have gone bankrupt and the project would have failed.

MR. LIMAN. And in July and August of '85, when you waived this interest, the project was aiding the contras?

MR. SECORD. Yes.

MR. LIMAN. Now, when you waived your interest, did you formalize that in any writing?

MR. SECORD. No. As I testified yesterday, no.

MR. LIMAN. Did you tell anyone other than Hakim and Zucker?

MR. SECORD. No.

MR. LIMAN. Did you ever receive any document indicating that the money that had been accumulated for you was no longer there?

MR. SECORD. No.

MR. LIMAN. To the extent of the profits that were then being held for you, were you just making a gift of them to Mr. Hakim?

MR. SECORD. I forswore them and left to Mr. Hakim to do with it as he wished.

* * *

MR. FOLEY. You made a decision apparently with Mr. Hakim not to share personally in the benefits of any of these sales?

MR. SECORD. That's right.

MR. FOLEY. And when was that decision made again, in mid-1985?

MR. SECORD. Probably August.

MR. FOLEY. August, 1985. And instead to turn those proceeds to the use of the so-called enterprise which would help the Contras in Nicaragua?

MR. SECORD. Yeah, and I believe that's been done.

* * *

MR. TRIBLE. Now, let me turn to a fellow named Zucker. Senator Cohen asked you a couple of questions about Mr. Zucker, and you had mentioned him in testimony yesterday, as I recall. Who is this fellow Zucker? Is it fair to say he is a fiduciary, a Swiss secret bank manager?

MR. SECORD. Mr. Zucker is an American attorney. Mr. Zucker is a money manager and a fiduciary under Swiss law, and he has been established in Switzerland for many years.

MR. TRIBLE. Alright sir. And your testimony is that you were introduced by Mr. Hakim?

MR. SECORD. Right.

MR. TRIBLE. Tell me, have you signed any fiduciary agreements with Mr. Zucker?

MR. SECORD. As I testified earlier, I signed a fiduciary agreement some time in '85 for him to manage whatever profits were generated. I later abandoned that.

MR. TRIBLE. Abandoned that in what fashion? Did you terminate that agreement?

MR. SECORD. I advised Zucker and Hakim that I was not taking any profits. They were both well aware of it.

MR. TRIBLE. But you still have a written agreement with Mr. Zucker to manage -- the balance?

MR. SECORD. Yeah, but it was no longer operative, because I don't have an account.

MR. TRIBLE. Do you have a copy of that agreement that you might make available to us?

MR. SECORD. I don't think I have a copy, but I'll try to get one for you. I should be able to.

MR. TRIBLE. Now how much money has Mr. Zucker managed for you through the years?

MR. SECORD. Only, only in that one instance.

MR. TRIBLE. And that was precisely what?

MR. SECORD. It was an amount of several hundred thousand dollars, maybe $400,000.

5. The underscored segments of material declarations made under oath before the Select Committees by the Defendant, RICHARD V. SECORD, as set forth in paragraph 4 of this Count, were false as the Defendant, RICHARD V. SECORD then and there well knew, in that the Defendant, RICHARD V. SECORD, during the period prior to November 25, 1986:

a. retained a personal economic interest in the profits of the Enterprise;

b. did not forswear his interest in the profits of the Enterprise but rather continued to receive direct and indirect benefits from the profits of the Enterprise;

c. did not advise Willard Zucker that he was not taking profits; and

d. used Willard Zucker on a continuous basis to manage over a million dollars of profits allocated to the Defendant, RICHARD V. SECORD.

(In violation of Title 18, United States Code, Section 1621.)

COUNT IV

(Receipt of Money from Arms Sales)

1. Paragraphs one through three of Count I of the Indictment are realleged and incorporated as if set forth in full herein.

2. On or about May 7, 1987, in the District of Columbia, the Defendant, RICHARD V. SECORD, having duly taken an oath that he would testify truthfully in proceedings before properly authorized Committees of the United States Congress, did willfully and contrary to said oath make false material declarations as hereinafter set forth.

3. It was material to the Select Committees' investigation described in paragraph 1.a of Count I of this Indictment to determine whether or not the Defendant, RICHARD V. SECORD, did, directly or indirectly, benefit financially from his involvement with the Enterprise.

4. At the time and place set forth on paragraph 2 of this Count, the Defendant, RICHARD V. SECORD, appearing as a witness under oath before the Select Committees, was asked the following questions and gave the following answers, knowing the underscored material declaration to be false:

MR. LIMAN. Now you testified yesterday and today that you received no money from either the arms sales to the Contras or to the -- to Iran; am I correct?

MR. SECORD. I said I got my salary.

MR. LIMAN. And your salary was all that you got, and that salary was $6,000 a month?

MR. SECORD. My personal money, yes.

5. The underscored material declaration made under oath before the Select Committees by the Defendant, RICHARD V. SECORD, as set forth in paragraph 4 of this Count, was false, as the Defendant, RICHARD V. SECORD, then and there well knew, in that the Defendant, RICHARD V. SECORD, personally received more money from arms sales to the Contras and to Iran than his salary of $6,000 a month.

(In violation of Title 18, United States Code, Section 1621.)

COUNT V

(Payments to STTGI)

1. Paragraphs one through three of Count I of the Indictment are realleged and incorporated as if set forth in full herein.

2. On or about May 7 and May 8, 1987, in the District of Columbia, the Defendant, RICHARD V. SECORD, having duly taken an oath that he would testify truthfully in proceedings before properly authorized Committees of the United States Congress, did willfully and contrary to said oath make false material declarations as hereinafter set forth.

3. It was material to the Select Committees' investigation described in paragraph 1.a. of Count I of this Indictment to determine whether or not monies received by STTGI, the company owned by the Defendant, RICHARD V. SECORD, and Albert Hakim, were actual loans from CSF or were payments from the Enterprise.

4. At the time and place set forth on paragraph 2 of this Count, the Defendant, RICHARD V. SECORD, appearing as a witness under oath before the Select Committees, was asked the following questions and gave the following answers, knowing the underscored material declarations to be false:

MR. LIMAN. Now, you remained a partner in STTGI, right?

MR. SECORD. Yes.

MR. LIMAN. And Mr. Hakim was your partner?

MR. SECORD. Yes.

MR. LIMAN. Did STTGI, the partnership that you had with Mr. Hakim, receive payments from Switzerland?

MR. SECORD. Yes.

MR. LIMAN. And do you remember how much it received?

MR. SECORD. I estimated for you that it was, over time, about four or five hundred thousand dollars.

MR. LIMAN. And this money was coming from the Swiss accounts?

MR. SECORD. This money appears to have been coming from those Swiss accounts that we looked at in your committee room. But my belief was that this was the result of the line of credit loan that we signed with CSF in 1985.

MR. LIMAN. So when this money was coming in in 1985 and '86, it's your testimony that you treated it as if it were a loan by Mr. Hakim's companies?

MR. SECORD. Correct. A loan from CSF.

MR. LIMAN. And what is CSF?

MR. SECORD. CSF is a fiduciary company and a brokering company in Switzerland, owned by Mr. Zucker.

* * *

MR. COHEN. Mr. Secord, Mr. Zucker, when did you first meet him?

MR. SECORD. In 1984.

MR. COHEN. And where did you meet him?

MR. SECORD. In Geneva.

MR. COHEN. In the summer of '84?

MR. SECORD. Probably about that time, yes.

MR. COHEN. For what purpose did you meet Mr. Zucker at that time?

MR. SECORD. Mr. Hakim introduced him to me. Mr. Hakim had done business with him for many years.

MR. COHEN. Alright. And what was the nature of your conversation at that time?

MR. SECORD. It was about our fledgling business, what our prospects were, some of the projects that we were undertaking.

MR. COHEN. Which business?

MR. SECORD. My international business, Stanford Technology Trading Group, International. Some of the projects that we were hoping to undertake, some work that we were pursuing in the Middle East.

MR. COHEN. So you were discussing a financial arrangement with Mr. Zucker as a banker?

MR. SECORD. We were talking to him about the prospects of him as a banker and as a lawyer and adviser both.

MR. COHEN. And as a banker, I assume he is in the business also of making money?

MR. SECORD. Yes sir.

MR. COHEN. And like Mr. Liman, he is not a philanthropist?

MR. SECORD. There's no doubt.

MR. COHEN. When you testified I believe yesterday that $500,000 had been credited to your account--the Stanford Technology Account--you said you had thought that was a loan?

MR. SECOND. That's right.

MR. COHEN. What led you to that particular conclusion?

MR. SECORD. Because we made a loan agreement with Mr. Zucker.

5. The underscored segments of material declarations made under oath before the Select Committees by the Defendant, RICHARD V. SECORD, as set forth in paragraph 4 of this Count, were false as the Defendant, RICHARD V. SECORD, then and there well knew, in that the monies received by STTGI from Switzerland were not

actual loans from CSF, but rather were payments received by STTGI from the profits of the Enterprise.

(In violation of Title 18, United States Code, Section 1621.)

COUNT VI

(Tri-American Arms)

1. Paragraphs one through three of Count I of the Indictment are realleged and incorporated as if set forth in full herein.

2. On or about May 7 and May 8, 1987 in the District of Columbia, the Defendant, RICHARD V. SECORD, having duly taken an oath that he would testify truthfully in proceedings before properly authorized Committees of the United States Congress, did willfully and contrary to said oath make false material declarations as hereinafter set forth.

3. It was material to the Select Committees' investigation described in paragraph 1.a. of Count I of this Indictment to determine whether or not the Defendant, RICHARD V. SECORD, and others associated with the Enterprise placed Enterprise monies in private investments for their own benefit, including an investment to produce machine guns and sell them to the Contras.

4. At the time and place set forth on paragraph 2 of this Count, the Defendant, RICHARD V. SECORD, appearing as a witness under oath before the Select Committees, was asked the following questions and gave the following answers, knowing the underscored material declarations to be false:

MR. LIMAN. Now, I want to go back to, to money. Have you ever heard of a company called Tri-American Arms?

MR. SECORD. Yes.

MR. LIMAN. Were you a partner in that company?

MR. SECORD. The company was never formed, but it was discussed that we would, that I would be a partner in the company.

MR. LIMAN. And it was contemplated that you would be a partner?

MR. SECORD. Yes.

MR. LIMAN. Do you know whether monies were transferred to Tri-American from the Swiss bank accounts that we have been talking about?

MR. SECORD. I know that Mr. Hakim transferred some money to this enterprise for the purpose of doing business.

MR. LIMAN. And, the, do you know, sir, that the amounts that were transferred were $150,000 in May of 1986 and $200,000 in June of 1986?

MR. SECORD. No, I don't think there were, I don't think the $200,000 was transferred. If it was, I don't know of it.

MR. LIMAN. If I were to show you,--and we will mark as the next exhibits, two debit advices from one of the Swiss accounts, Albon Values--would that refresh your recollection?

These are records that are provided by Mr. Hakim.

I don't want you to read the documents into the record, because we are going to wait for Mr. Hakim for that. But I'm just asking you whether or not you have a recollection now that the total amount that was transferred was $350,000.

MR. SECORD. The $150,000 I was aware of. I know nothing about this second piece of paper. You'll have to ask Mr. Hakim about that.

MR. LIMAN. Now, do you know, sir, whether the purpose of your partnership was to invest in a manufacturer of machine guns?

MR. SECORD. Manufacturer of submachine guns, yes.

MR. LIMAN. Of submachine guns.

MR. SECORD. Yes.

MR. LIMAN. And did that deal go through?

MR. SECORD. No.

MR. LIMAN. Was one of the purposes to have that company sell weapons to the Contras?

MR. SECORD. No.

MR. LIMAN. And were the monies that were invested, monies that came out of the Iranian and contra arms sales?

MR. SECORD. I don't know. I think, I thought it was part of, of Hakim's profit distribution.

MR. LIMAN. Well, if you were to be a partner, what were you putting in?

MR. SECORD. My management and knowledge, and ability to market. There was a third partner who was doing a similar thing.

* * *

MR. TRIBLE. Let me ask you to turn your attention to Tri-America. Tri-American Arms, about which there have also been questions raised.

At a point, $150,000 was invested in this partnership is that correct?

MR. SECORD. Correct.

MR. TRIBLE. And where did that money come from?

MR. SECORD. Mr. Hakim, as I've just testified.

MR. TRIBLE. Now why would Mr. Hakim invest in that enterprise?

MR. SECORD. Because he, based on my recommendation, thought it was a pretty good business prospect.

5. The underscored segments of material declarations made under oath before the Select Committees by the Defendant, RICHARD V. SECORD, as set forth in paragraph 4 of this Count, were false as the Defendant, RICHARD V. SECORD, then and there well knew, in that:

a. the money for Tri-American Arms came directly from the profits of the Enterprise, and not from Mr. Hakim; and

b. one of the purposes of Tri-American Arms was to sell arms to the Contras.

(In violation of Title 18, United States Code, Section 1621.)

COUNT VII

(Defex S.A.)

1. Paragraphs one through three of Count I of the Indictment are realleged and incorporated as if set forth in full herein.

2. On or about May 7, 1987, in the District of Columbia, the Defendant, RICHARD V. SECORD, having duly taken an oath that he would testify truthfully in proceedings before properly authorized Committees of the United States Congress, did willfully and contrary to said oath make false material declarations as hereinafter set forth.

3. It was material to the Select Committees' investigation described in paragraph 1.a. of Count I of this Indictment to determine whether or not the Defendant, RICHARD V. SECORD, and others associated with the Enterprise used the shell company "Defex S.A." to disguise and hide Enterprise monies, and, if so, to determine why the Defendant, RICHARD V. SECORD, and others associated with the Enterprise were seeking to hide and disguise the Enterprise's monies.

4. At the time and place set forth on paragraph 2 of this Count, the Defendant, RICHARD V. SECORD, appearing as a witness under oath before the Select Committees, was asked the following questions and gave the following answers, knowing the underscored material declarations to be false:

MR. LIMAN. Tell us what Defex Fribourg or Defex Switzerland is.

MR. SECORD. I'm not sure. I speculated, based on my recall of some conversations which I had had with Mr. Hakim -- I speculated to your staff that this was a cover mechanism that he had built into the uh, into the accounts.

MR. LIMAN. Would you explain what you mean by that?

MR. SECORD. It appears that in managing the accounts, Mr. Hakim had set up one or more companies through which he transferred monies for the purpose of disguise, disguising the source of the monies.

MR. LIMAN. And who was he trying to disguise the money from? You?

MR. SECORD. No. All the arms dealers.

MR. LIMAN. Well, did the arms dealers have something which the United States Government did not -- access to his Swiss records?

MR. SECORD. No, but he didn't want them to be aware of the banks from which the monies were flowing in every case. He was trying to confuse -- he was trying to confuse the situation, and he did.

MR. LIMAN. Well, did he own Defex Company in Portugal?

MR. SECORD. I think so.

Oh, no. In Portugal? No, sir. I thought you meant the Fribourg Shell Company.

MR. LIMAN. So, he took a name, Defex, which was the name of the Portuguese arms company and put that on the name of one of the bank accounts into which this money was flowing?

MR. SECORD. So it appears. You are going to have to ask him what his exact rationale was.

MR. LIMAN. Did you discuss that with him?

MR. SECORD. I told you I have a vague recollection of a discussion with him on this matter, and it was a cover mechanism.

MR. LIMAN. And the cover was so that other arms dealers wouldn't know which banks he had his money in?

MR. SECORD. That's correct.

5. The underscored segments of material declarations made under oath before the Select Committees by the Defendant, RICHARD V. SECORD, as set forth in paragraph 4 of this Count, were false as the Defendant, RICHARD V. SECORD, then and there well knew, in that the Defendant, RICHARD V. SECORD, and others associated with the Enterprise did not use "Defex S.A." to disguise the source and location of Enterprise monies from arms dealers, but rather used "Defex S.A." to hide and disguise from Contra leaders and American officials the true prices the Enterprise was paying for weapons for the Contras, and the profits they were taking for themselves from these transactions.

(In violation of Title 18, United States Code, Section 1621.)

COUNT VIII

(Foreign Bank Accounts)

1. Paragraphs one through three of Count I of the Indictment are realleged and incorporated as if set forth in full herein.

2. On or about May 8, 1987, in the District of Columbia, the Defendant, RICHARD V. SECORD, having duly taken an oath that he would testify truthfully in proceedings before properly authorized Committees of the United States Congress, did willfully and contrary to said oath make false material declarations as hereinafter set forth.

3. It was material to the Select Committees' investigation described in paragraph 1.a. of Count I of this Indictment to determine whether or not the Defendant, RICHARD V. SECORD, received benefits from the Enterprise and had those benefits placed in foreign accounts in which he had a beneficial interest.

4. At the time and place set forth on paragraph 2 of this Count, the Defendant, RICHARD V. SECORD, appearing as a witness under oath before the Select Committees, was asked the following questions and gave the following answers, knowing the underscored material declaration to be false:

MR. TRIBLE. Now, you have been asked on several occasions, I think, if you have a Swiss bank account, and you have said no; is that correct?

MR. SECORD. I gave you a signed document this morning that says that.

MR. TRIBLE. How about other foreign bank accounts?

MR. SECORD. I have a checking account in a British -- in the British Midland Bank, which has about 95 pounds in it.

MR. TRIBLE. How about any beneficial interest in any foreign accounts?

MR. SECORD. None. I have answered that previously.

MR. TRIBLE. Any member of your family?

MR. SECORD. No.

5. The underscored material declaration made under oath before the Select Committees by the Defendant, RICHARD V. SECORD, as set forth in paragraph 4 of this Count was false, as the Defendant, RICHARD V. SECORD, then and there well knew in that the Defendant, RICHARD V. SECORD, had beneficial interests in foreign accounts.

(In violation of Title 18, United States Code, Section 1621.)

COUNT IX

(Benefits for Oliver North)

1. Paragraphs one through three of Count I of the Indictment are realleged and incorporated as if set forth in full herein.

2. On or about June 10, 1987, in the District of Columbia, the Defendant, RICHARD V. SECORD, unlawfully, knowingly and willfully made a material false, fictitious and fraudulent statement and representation to a department or agency of the United States, to wit, the Select Committees for the Senate and the House of Representatives, in a matter within their jurisdiction, to wit, the Select Committees' investigation of the Iran/Contra affair, and, in particular, their investigation of whether or not monies from the Enterprise went to the personal benefit or the individuals involved with the Enterprise.

3. It was material to the Select Committees' investigation described in paragraph 1.a. of Count I of this Indictment and paragraph 2 of this Count to determine whether or not Lt. Colonel Oliver North received anything of value from the Enterprise.

4. At the time and place set forth in paragraph 2 of this Count, the Defendant, RICHARD V. SECORD, appearing as a witness under oath before the duly authorized staff of the Select Committees, was asked the following question and gave the following answer, knowing the underscored material declaration to be false:

BY MR. NIELDS:

Q. Mr. Secord, did there-are you aware of any money from the Enterprise which went to the benefit of Mr. North?

A. No.

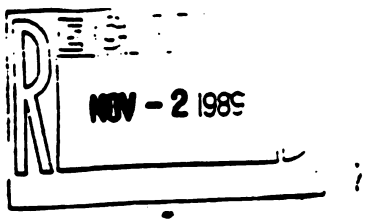
5. The underscored material declaration made under oath before the duly authorized staff of the Select Committees by the Defendant, RICHARD V. SECORD, as set forth in paragraph 4 of this Count, was false in that, as the Defendant, RICHARD V. SECORD, then and there well knew, monies from the Enterprise went to the benefit of Lt. Colonel North.

(In violation of Title 18, United States Code, Section 1001.)

A TRUE BILL:

Deputy FOREPERSON

LAWRENCE E. WALSH
INDEPENDENT COUNSEL



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	Criminal Nos. 88-0810 and
RICHARD V. SECORD,	)	
Defendant.	)	

PLEA AGREEMENT

It is agreed by the parties as follows.

1. The defendant will plead guilty to Count 9 of the Indictment.

2. The United States will move to dismiss the remaining counts of the Indictment with prejudice after the guilty plea is accepted by the Court.

3. No further criminal charges, including criminal tax charges, will be brought against the defendant based on information now known to the Office of Independent Counsel relating to the Iran/Contra affair.

4. The defendant will cooperate fully with the Office of Independent Counsel by testifying truthfully at any trial, deposition, or grand jury proceeding to which he may be called. The defendant will also meet with representatives of the Office of Independent Counsel and other United States Government personnel for interviews, as reasonably requested, and will make available to the Office of Independent Counsel all

books, records, documents, and other tangible objects which may be requested of him.

5. The United States retains the right to allocute the sentencing, consistent with representations heretofore made between counsel.

6. If it is judicially determined that the defendant has violated paragraph 4 of this agreement, then the defendant shall be liable to the United States Government to the same extent as if this agreement had not been executed.

There are no further additional agreements between the parties that are part of this Agreement.

LAWRENCE E. WALSH
Independent Counsel

By: _____
Reid H. Weingarten
Associate Counsel

Richard V. Secord

Thomas C. Green
Attorney for defendant Secord

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	Criminal Nos. 88-0080-03,
v.	)	89-0110 (AER)
	)	
RICHARD V. SECORD,	)	
	)	
Defendant.	)	
	)	

GOVERNMENT'S PROFFER TO SUPPORT GUILTY PLEA

On April 7, 1989, the Grand Jury indicted defendant Richard Secord for alleged obstruction of Congress, perjury and false statements. Count IX of the indictment charges that defendant testified falsely under oath on June 10, 1987, to investigators of the Select Congressional Committees investigating the Iran/Contra affair, in violation of 18 U.S.C. § 1001. Count IX charges that Secord's answer in the following exchange was false:

> Q. Mr. Secord, did there--are you aware of any money from the Enterprise which went to the benefit of Mr. North?
>
> A. No.

If called upon to prove this allegation at trial, the government would prove that defendant knew that in fact money from the Enterprise went to North's benefit as the

result of defendant's purchase of a security system costing in excess of $13,000, and the establishment of a secret account containing $200,000 in Switzerland for North (the so-called "Button account"). A detailed summary of the government's proof appears below.

1. The Security System

During the spring of 1986, Secord introduced Oliver North to Glenn Robinette, a former CIA security specialist who was then engaged in performing certain services for Secord. The evidence would show that in late April, 1986, Secord asked Robinette if he could handle the installation of a security system at the North home. Robinette surveyed the home and met with North and Secord in North's office at the Old Executive Office Building in Washington, D.C., to discuss his proposal.

On May 19, 1986, Robinette paid a subcontractor a $6,000 down payment for the installation of part of the system. Robinette notified Secord of the expenses he had incurred for the security system and asked for immediate reimbursement. The following day, Robinette received from Secord $7,000 in cash for his expenses and part of his fee. During this time period, Secord was receiving substantial cash payments from the Enterprise. The government would show that Secord's personal bank accounts in this country were not

the source of the cash to Robinette, but rather the cash must have come from the Enterprise.

During July and August, Robinette completed installation of the North security system, spending an additional $8,000. He advised Secord that he was owed $8,000 to cover payments to contractors and an additional $1,000 for his time and services. In response, Secord directed that Willard Zucker, the Swiss financier with control over the Enterprise accounts, pay Robinette the money. A note in Secord's handwriting found in Zucker's files directs that Zucker send a check in the amount of $9,000 to Robinette's home address and instructs Zucker to "mail check from a U.S. bank if possible". Zucker withdrew the money from an Enterprise account and arranged for a cashier's check in the amount of $9,000 to be delivered to Robinette from Republic National Bank in New York.

The government would prove that after disclosure of the Iran/Contra affair, Secord, Robinette and North took steps to cover-up the gratuity paid to North. In early December 1986, North asked Robinette that he send him a "bill" for the security system. Robinette sent North two backdated bills, dated July and September, 1986. North in turn sent Robinette two letters falsely dated May and October, 1986, in which arrangements for future "payment" of

the security system are discussed. When Robinette informed Secord of the letters he had sent North, Secord expressed approval: "Fine, glad you did".

On March 16, 1987, CBS News aired a broadcast that Robinette had paid for the security system installed at North's home. That day, North telephoned Robinette and asked that he bring copies of the backdated letters to North's attorneys' office the following day. The next morning Secord asked Robinette to meet him following Robinette's appointment with North's attorneys.

The evidence would show that Robinette provided North's attorneys with copies of the backdated letters, and immediately went to meet Secord at a hotel bar. Secord asked Robinette whether he had sent the backdated bills to North. When Robinette responded in the affirmative, Secord replied "Good. You did the right thing. I see no problems." Although Secord then and there well knew that he had paid Robinette for the North security system, he also "reminded" Robinette that North was going to pay for the system and stated "that is your understanding, right?"

2. B. Button Account

The evidence would show that, in February 1986, Secord and Albert Hakim, Secord's partner and alleged co-conspirator, asked Willard Zucker to look into a means of

funneling money to North to help defray the costs of educating his children, and as a hedge against the possibility that North would not return from dangerous missions then being considered. As a first step, Secord arranged a meeting between Zucker and Mrs. North. Zucker met with Mrs. North in Philadelphia in March, 1986, where he obtained background and educational information regarding North's children. Zucker reported the results of the meeting to Secord.

Shortly after this meeting, Secord itemized the upcoming anticipated disbursements from Enterprise accounts, listing in three places in his handwritten notes of the Enterprise finances $200,000 as payable for a purported "insurance fund". A few weeks later, Zucker opened a new Enterprise bank account, in the name of Hyde Park Square Corp., with an initial deposit of approximately $200,000. The evidence would show that on April 21, 1986, Secord informed North, using a KL-43 encryption device, that current obligations over the next few weeks included a "200 K Insurance Fund".

In May 1986, Hakim instructed Zucker to open an investment account for the benefit of North's children. Zucker transferred the $200,000 in Hyde Park Square to an account under the pseudonym of "B. Button" and undertook

steps to develop an investment program for these funds. Zucker's handwritten notes indicate that "Mrs. Button's" telephone number was Oliver North's residence number. Within the next few weeks, Zucker called Mrs. North to "advance the ball" and arrange another meeting, but Mrs. North was unavailable for the suggested dates. Zucker reported on this conversation to Secord.

The evidence would show that during the summer of 1986, Zucker, at Hakim's urging in particular, continued to look for ways discretely to transfer monies to the North family. In September 1986, Zucker met with a Washington, D.C., attorney to solicit his assistance. The two men discussed creating a sham job for Mrs. North, which could be used as a cover to funnel substantial sums to the family, or disguising a payment to Mrs. North as a bogus real estate commission. Ultimately, the disclosure of the Iran/Contra affair forced Zucker to abandon these efforts.

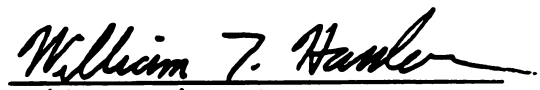
3. Motive

The evidence would show that Secord's motive for providing benefits to North was at least in part financial. During 1985 and 1986, the evidence would show that Secord personally received total profits from the sale of weapons to the Contras and Iran in excess of $1.5 million in the form of monies set aside for him in Swiss accounts and personal

investments in this country. Hakim received profits in comparable amounts. These profits were generated largely as a result of business supplied Secord and Hakim through North. The benefits provided North were intended at least in part to thank him for providing these lucrative financial opportunities and to induce him to remain in his position on the National Security Council, so that Secord and Hakim could continue to realize such immense profits.

Respectfully submitted,

LAWRENCE E. WALSH
Independent Counsel

By 

Reid H. Weingarten
William T. Hassler
Antonia B. Ianniello
Associate Counsel

Office of Independent Counsel
555 Thirteenth Street, N.W.
Suite 701-West
Washington, D.C. 20004
(202) 383-8940

Dated: November 8, 1989

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	Criminal No.
v.	)	
	)	Violations:
LAKE RESOURCES, INC. and ALBERT HAKIM,	)	18 U.S.C. § 641 18 U.S.C. §§ 209 and 2.
Defendants.	)	(Theft of Government Property; Supplementing the Salary of a Government Official)

I N F O R M A T I O N

COUNT ONE

(Theft of Government Property by LAKE RESOURCES, INC.)

The Independent Counsel charges:

1. At all times relevant to this Information, the National Security Council (the "NSC") was a government entity established by the National Security Act of 1947, whose statutory members were the President of the United States, the Vice President, the Secretary of State and the Secretary of Defense. At all times relevant to this Information, other officials were also members of the NSC by appointment of the President. The staff of the NSC had offices located in the Old Executive Office Building ("OEOB"), Washington, D.C.

2. At all times relevant to this Information, the Contras were military insurgents engaged in military and paramilitary operations in Nicaragua.

3. From in or about December 1981 to on or about October 12, 1984, the United States Government, acting principally through the Central Intelligence Agency (the "CIA"), pursuant to written presidential findings, provided the Contras with financial support, arms and military equipment, as well as instruction, tactical and other advice, coordination, intelligence and guidance. During fiscal year 1984, Public Law 98-212 prohibited the CIA, the Department of Defense and any other agency or entity of the United States involved in intelligence activities from obligating or expending more than $24 million for direct or indirect support of military or paramilitary operations in Nicaragua. These funds were almost entirely obligated by June 1984.

4. On October 12, 1984, Public Law 98-473 was enacted and expressly prohibited the use of funds available to certain agencies and entities of the United States from being obligated or expended in support of military or paramilitary operations in Nicaragua, stating in relevant part:

> During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

This provision of the law was commonly known as the Boland Amendment.

5. Although the Boland Amendment was modified twice, agencies and entities of the United States involved in intelligence activities were at all times between October 12, 1984 and October 17, 1986 prohibited from spending funds available to them (including, without limitation, funds for salaries and transportation) to provide lethal military or paramilitary supplies to the Contras or to participate in the planning or execution of military or paramilitary operations in Nicaragua. At no time during this period was any member of the NSC staff authorized by a presidential finding to undertake any covert or special activities with respect to Nicaragua, including any of the covert or special activities previously undertaken by the CIA. As of October 18, 1986, the provision by the CIA of military aid to the Contras was authorized again pursuant to new enactment and appropriation.

6. Beginning with the overthrow of the Shah of Iran on or about January 16, 1979 and the seizure of the United States embassy in Iran and its staff on November 4, 1979, relations between the United States Government and the government of Iran were characterized by mutual hostility and tension. At all times relevant to this Information, the United States Government imposed an embargo on shipments of arms to Iran. In January 1984, the Secretary of State

designated Iran a sponsor of international terrorism and, thereafter, the United States actively urged its allies not to permit the shipment of arms to Iran, in part, because of its sponsorship of international terrorism and in part, because of the continuation of the Iran-Iraq war.

7. The defendant LAKE RESOURCES, INC. ("LAKE RESOURCES") is a Panamanian Company incorporated on May 15, 1985. The assets and activities of the defendant LAKE RESOURCES were controlled by Albert Hakim, Richard V. Secord, Oliver L. North and others.

8. Albert Hakim was the principal shareholder of the defendant LAKE RESOURCES. Beginning in the fall of 1984, Hakim organized the corporate and financial arrangements for an effort to provide supplies, including lethal military supplies, to the Contras, and beginning in late 1985 or early 1986, Hakim participated on behalf of the United States in an initiative involving the sale of arms to elements in Iran.

9. At all times relevant to this Information until November 25, 1986, Oliver L. North was a Lieutenant Colonel in the United States Marine Corps detailed to the NSC staff, where he held the position of Deputy Director, Political-Military Affairs. Among other things, North was designated to perform certain activities with respect to the Contras, counter-terrorism, and the United States initiative involving the sale of arms to elements in Iran and efforts to obtain

the release of American citizens held hostage in Lebanon. On November 25, 1986, North was discharged from the NSC staff.

10. At all times relevant to this Information, Richard V. Secord was President of Stanford Technology Trading Group International ("STTGI"), with offices located in Vienna, Virginia. Beginning in the fall of 1984, Secord undertook to provide supplies, including lethal military supplies, to the Contras. Beginning in the fall of 1985, Secord also undertook to assist in the transfer of weapons to Iran on behalf of the United States in an initiative involving the sale of arms to elements in Iran and efforts to obtain the release of American citizens held hostage in Lebanon.

11. At all times relevant to this Information until November 25, 1986, John M. Poindexter was an officer of the United States Navy who was detailed to the NSC. On December 4, 1985, Poindexter was appointed National Security Advisor. Poindexter held that position until November 25, 1986, when he resigned.

12. In or before the middle of 1985, Oliver L. North, Richard V. Secord and Albert Hakim and others commenced an enterprise (the "Enterprise") that was intended, among other things, to support military and paramilitary operations in Nicaragua by the Contras.

13. Beginning in or before the middle of 1985, Albert Hakim, acting in coordination with Oliver L. North, Richard

V. Secord, and others provided and oversaw a secret financial infrastructure for the Enterprise consisting of various foreign corporations and Swiss bank accounts. The principal corporation through which the Enterprise thereafter operated was the defendant LAKE RESOURCES. In July 1985, Hakim caused a bank account in the name of the defendant LAKE RESOURCES to be opened at the Credit Suisse Bank in Geneva, Switzerland. By November 1986, the financial network of the Enterprise also included the following foreign corporations with foreign bank accounts: Hyde Park Square Corp., Dolmy Business Inc., Albon Values Corp., Gulf Marketing Consultants Ltd., Toyco Inc., Udall Research Corp. and Defex S.A.

14. From late 1985 to November 1986, John M. Poindexter, Oliver L. North, Richard V. Secord and Albert Hakim, in order to raise additional funds for the Enterprise, using the influence and position of Poindexter and North, took advantage of a United States Government initiative involving the sale of arms to elements in Iran and efforts to obtain the release of American citizens held hostage in Lebanon, to generate and divert approximately $16.2 million dollars from the proceeds of those arms sales to Enterprise bank accounts, including accounts in the name of the defendant LAKE RESOURCES to be spent, with the knowledge and approval of John M. Poindexter, for various purposes designated by North, Secord and Hakim, including the purchase

and delivery of military weapons and supplies for the Contras.

15. In order to hire aircraft to transport several shipments of Hawk missiles to Iran, Oliver L. North caused approximately $1 million from certain Israeli participants in the transaction to be deposited into the bank account of the defendant LAKE RESOURCES, a bank account used and controlled by the Enterprise to finance the purchase and delivery of weapons and supplies for the Contras. After all of the shipments of Hawk missiles to Iran, except the first, were cancelled, the defendant LAKE RESOURCES was left with an unused balance of more than eight hundred thousand dollars.

16. In December 1985, Albert Hakim, Secord, North, and others caused thousands of pounds of lethal military supplies to be transported to Central America for use by the Contras.

17. On January 17, 1986, John M. Poindexter orally briefed the President from a memorandum prepared by Oliver L. North, after which the President signed a classified finding authorizing the sale of arms by the United States Government to elements in Iran in support of a United States initiative to establish a more moderate government in Iran, to obtain intelligence relating to Iran, and to secure the release of American hostages held in Lebanon.

18. In January 1986, as part of the United States initiative, Oliver L. North negotiated on behalf of the

United States with a representative of elements in Iran the transfer of 4,000 TOW missiles to Iran at a price of $10,000 per TOW missile, with 1,000 of the 4,000 TOW missiles to be delivered in a first installment. At the same time, North directed the representative of the Iranians to deposit the $10 million payment for the first 1,000 TOW missiles into the defendant LAKE RESOURCES' bank account -- the same bank account then used to finance the Contra resupply operation. North also advised John M. Poindexter that the representative of the Iranians had offered to pay $10,000 per missile.

19. In early 1986, Oliver L. North and Richard V. Secord agreed to retain for the Enterprise a substantial part of the $10 million payment for the first shipment of TOW missiles by having Secord transmit to the United States through the CIA substantially less than was paid for these missiles on behalf of the Iranians. In furtherance of this plan, North told an official of the CIA that a price of $6,000 per TOW missile was too high and should be reduced, without revealing that the Iranian representative had already offered to pay $10,000 per missile. Thereafter, the price to be paid to the CIA was reduced to approximately $3,469 per TOW missile, for a total of $3.7 million for 1,000 TOW missiles, including costs.

20. In February 1986, the defendant LAKE RESOURCES received $10 million in payment on behalf of Iran for the

1,000 TOW missiles pursuant to the agreement with the representative of elements in Iran negotiated by Oliver L. North on behalf of the United States.

21. In February 1986, North, Secord, and Hakim, in turn, directed that only approximately $3.7 million be transmitted to the CIA, thus leaving a remainder of over $6 million in the Enterprise account. At that time, the United States Government shipped 1,000 TOW missiles to Iran. North, Secord, and Hakim caused substantial sums of money from Enterprise bank accounts to be spent to purchase and deliver military weapons and supplies for the Contras.

22. In early March 1986, North, Secord, and Hakim caused thousands of pounds of lethal military supplies to be delivered to Central America for the Contras.

23. In April 1986, North, Secord, and Hakim caused thousands of pounds of lethal military supplies to be delivered to Central America for the Contras.

24. In the spring of 1986, as part of the continuing United States initiative, pursuant to the activities of John M. Poindexter and Oliver L. North, the United States Government agreed to sell Hawk missile spare parts to elements in Iran at a total price of $15 million. North, among other things, directed his assistant to calculate the price to be charged the Iranian representative for the Hawk spare parts by multiplying by a factor of 3.7 the prices for

those spare parts contained in a United States Government price list.

25. In May 1986, at Oliver L. North's direction, $15 million was deposited on behalf of elements in Iran into the bank account of defendant LAKE RESOURCES. At about the same time, the defendant LAKE RESOURCES also received $1.685 million from other sources. Thereafter, North, Secord, and Hakim caused only $6.5 million to be transmitted to the United States through the CIA for the Hawk spare parts for Iran and TOW missiles for Israel to replenish Israel for its transfer of TOW missiles to Iran in August and September 1985, thus leaving a remainder of almost $10 million in the bank accounts of the Enterprise. North, Secord, and Hakim caused substantial sums of money from Enterprise bank accounts to be spent to purchase and deliver military weapons and supplies for the Contras.

26. In October and November 1986, as part of the continuing United States initiative, John M. Poindexter, Oliver L. North and Richard V. Secord caused the United States Government to ship 500 TOW missiles to Iran at a total price of $3.6 million. Pursuant to the agreement negotiated on behalf of the United States Government, the Iranian representatives paid into an Enterprise bank account approximately $3.6 million in payment for the missiles. North, Secord, and Hakim, in turn, caused only approximately

$2.037 million to be transmitted to the United States through the CIA, thus leaving a remainder of approximately $1.5 million in the bank account of the Enterprise. The 500 TOW missiles were then delivered.

27. From the second half of 1985 to at least December 1986, Richard V. Secord and Albert Hakim followed the direction of Oliver L. North, with the knowledge and approval of John M. Poindexter, as to the expenditure of part of the funds in the possession of the Enterprise. Those expenditures included the provision of military weapons and supplies to the Contras, the payment of at least $200,000 on behalf of Contra leaders, the purchase for approximately $100,000 of radios for a foreign political group, the purchase for approximately $320,000 of a ship to be used for various clandestine activities, and other purposes.

28. From late 1985 to November 1986, the defendant LAKE RESOURCES unlawfully, willfully and knowingly did embezzle, steal and convert to its own use and the use of others, and without authority did dispose of, money and things of value of the United States and a department and agency thereof, with a value of more than $100, to wit, the defendant deceitfully and improperly generated and diverted part of the proceeds of the transfer of United States weapons to Iran, and diverted part of the realizable value of such weapons, for purposes unauthorized by law, including the retention of

monies in bank and investment accounts maintained in Switzerland and the provision of support for military and paramilitary operations in Nicaragua by the Contras, all of which was done by the defendant LAKE RESOURCES notwithstanding a classified written finding by the President which authorized the transfer of United States weapons to Iran only for the purposes of the Iran initiative as enumerated in the finding.

(Violation of Title 18, United States Code, Section 641.)

COUNT TWO

(Supplementing the Salary of a Government Official by HAKIM)

The Independent Counsel further charges:

1. At all times relevant to this Information, the defendant ALBERT HAKIM was the Chairman of the Board of Directors of Stanford Technology Trading Group International ("STTGI"), with offices located in Vienna, Virginia. and the Mandator, bank account signatory, and principal shareholder of Udall Research Corporation, a Panamanian corporation.

2. At all times relevant to this Information, Richard V. Secord was President of STTGI.

3. At all times relevant to this Information until November 25, 1986, Oliver L. North was a Lieutenant Colonel in the United States Marine Corps detailed to the National Security Council staff, where he held the position of Deputy Director, Political-Military Affairs.

4. In 1986, Richard V. Secord knowingly, willfully, and unlawfully supplemented the salary of Oliver L. North by providing things of value to North as compensation for his services as an officer of the National Security Council, from a source other than the Government of the United States or the treasury of any State, county, or municipality.

5. In 1986, Richard V. Secord arranged for the payment of approximately $13,800 for the construction of a

security fence at North's personal residence which protected North and his family from threats made by international terrorists.

6. The money for the aforesaid payment was derived from funds in accounts that were under the control of ALBERT HAKIM, Richard V. Secord, and others, and the principal source of funds was the account of Udall Research Corporation.

7. During 1986, ALBERT HAKIM, knowing of Secord's intention to arrange for the construction of the security fence, and knowing of Secord's intention to use funds from the accounts maintained under the control of Richard V. Secord, ALBERT HAKIM, and others, to pay for the security fence, thereafter continued to maintain those accounts in a secret manner in order to hinder the disclosure of any payments and the apprehension of those involved.

8. During 1986, in the District of Columbia and elsewhere, the defendant ALBERT HAKIM knowingly, willfully, and unlawfully aided and abetted the commission of an offense against the United States, to wit, the unlawful supplementation of the salary of a government officer, Oliver L. North, as compensation for his services as an officer of

the National Security Council, from a source other than the Government of the United States or the treasury of any State, county or municipality.

(Violation of Title 18, United States Code, Sections 209(a) and 2).

LAWRENCE E. WALSH
Independent Counsel

excluding paragraphs 3-7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
v.	)	Criminal No. 88-0080
	)	04-GAG
ALBERT HAKIM,	)	
Defendant.	)	

PLEA AGREEMENT

It is hereby agreed by and between the United States of America, by Lawrence E. Walsh, Independent Counsel; the defendant Albert Hakim, and N. Richard Janis, his attorney; and Lake Resources, Inc. as follows:

1. Albert Hakim will plead guilty to a one-count Information charging a violation of Title 18, United States Code, Sections 209 and 2, aiding and abetting the supplementing of the salary of an officer and employee of the United States Government, to wit, Lieutenant Colonel Oliver L. North.

2. The United States will move to dismiss with prejudice all pending charges against Albert Hakim after the guilty plea is accepted by the Court.

Albert Hakim's plea shall be entered pursuant to Fed. R. Crim. P. 11(a)(2), preserving all of Mr. Hakim's rights to appeal from the adverse decisions of the Honorable Gerhard A. Gesell denying Mr. Hakim's motions made under Title 18 United States Code Sections 3002, 6002, including Judge Gesell's order

dated June [redacted] 1988, denying Albert Hakim's motion to dismiss Indictment No. [redacted]-0080, 04-GAG.

4. In the event that Albert Hakim's appeal pursuant to Paragraph [redacted] of this Plea Agreement results in a reversal or remand, it is agreed that no information or testimony provided by Albert Hakim to the Office of Independent Counsel or pursuant to this Plea Agreement after the date of this Plea Agreement, or any information provided by or on behalf of Mr. Hakim to the probation office or by way of allocution, will be used directly or indirectly against Albert Hakim in any subsequent criminal proceeding resulting from such reversal or remand.

5. No further criminal charges directly or indirectly relating to the Iran/Contra matter, including criminal tax charges, will be brought by the United States against Albert Hakim or the entities listed in the Appendix hereto.

6. Pursuant to Fed. R. Crim. P. 11(f), at the time of the guilty plea, the United States will set forth the factual basis for the plea. Albert Hakim will concur, in open Court, with the following uncontested facts:

a) That Richard V. Secord supplemented the salary of Oliver North by providing things of value to North as compensation for his services as an officer of the National Security Council;

b) That Richard V. Secord arranged for the payment of approximately $13,800 for the construction of a security fence at North's personal residence which

protected North and his family from threats made by international terrorists;

c) That the money for the aforesaid payment was derived from funds in accounts that were under the control of Albert Hakim, Richard V. Secord and others;

d) That Albert Hakim, knowing of Richard V. Secord's intention to arrange for the construction of the security fence, and knowing of Richard V. Secord's intention to use funds from the accounts maintained under the control of Richard V. Secord and Albert Hakim to pay for the security fence, thereafter continued to maintain those accounts in a secret manner, thus hindering the disclosure of any payments and the apprehension of those involved.

7. Albert Hakim will testify truthfully at any trial, deposition, or grand jury proceeding related to the Iran/Contra matter to which he may be called as a witness. Albert Hakim will also meet with representatives of the Office of Independent Counsel and other United States Government personnel for interviews related to the Iran/Contra matter, on a reasonable basis as requested, and will make available to the Office of Independent Counsel or the United States all books, records, documents, and other tangible objects ("records") related to the Iran/Contra matter in his possession, custody, or control in an individual or representative capacity which may be requested of him.

8. The United States will not recommend incarceration of Albert Hakim, or recommend any other specific sentence, which is in the sole discretion of the sentencing judge. The United States will advise the probation office and sentencing judge of all facts relevant to the imposition of sentence on this offense, including the extent and nature of Albert Hakim's cooperation pursuant to this Plea Agreement and any civil agreement concerning funds maintained in foreign accounts.

9. Lake Resources, Inc. will waive Indictment and enter a plea of guilty to a one-count Information charging a violation of Title 18, United States Code, Section 641, conversion of property of the United States of a value in excess of $100.

10. Pursuant to Fed. R. Crim. P. 11(f), the United States will set forth the factual basis for the plea. Lake Resources, Inc. will concur, in open Court, through a representative, with the following uncontested facts:

a) That Albert Hakim, Richard V. Secord, Oliver L. North, and others controlled the assets and activities of Lake Resources, Inc.;

b) That in 1985 and 1986, Lake Resources, Inc., without authority, disposed of a thing of value of the United States in excess of $100, to wit, funds generated as a result of the sale of United States weapons to Iran, so as to support the Contras militarily.

11. If it is judicially determined that Albert Hakim has substantially, materially and willfully violated Paragraph 7 of this Plea Agreement, then this Plea Agreement will be null and

void and Albert Hakim will be fully liable to the same extent as if this Plea Agreement had not been executed.

12. This Plea Agreement is independent of any civil agreement concerning funds maintained in foreign accounts.

13. There are no other agreements between Albert Hakim and the Office of Independent Counsel with respect to the disposition of criminal charges.

Dated: Washington, D.C.
November 8, 1989

ALBERT HAKIM 11/21/89

N. Richard Janis 11/21/89
N. RICHARD JANIS
Attorney for Albert Hakim

LAWRENCE E. WALSH
Independent Counsel

By: 11/21/89
STUART E. ABRAMS
Associate Counsel

LAKE RESOURCES, INC.

By: John P. Hume 11/21/89 mg
JOHN P. HUME
Attorney for Lake
Resources, Inc.

APPENDIX

Stanford Technology Corporation

Stanford Technology Trading Group International

Expand Trade International Affiliates

Multicorp International

Multicorp International Services

Albon Values Corporation

Defex S.A.

Dolmy Business Inc.

Gulf Marketing Consultants, Ltd.

Hyde Park Square Corporation

Stanford Technology Corporation Services S.A.

Stantech Services S.A.

Toyco S.A.

Korel Assets

Scitech Trading Group Inc.

B. Button

AH Sub A/C #1, 2, or 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on January 28, 1987

UNITED STATES OF AMERICA	:	Criminal No. 88-0080-02
	:	
v.	:	
	:	
OLIVER L. NORTH,	:	
	:	Violations:
Defendant.	:	
	:	18 U.S.C. § 1505;
	:	18 U.S.C. § 1001;
	:	18 U.S.C. § 2071(b);
	:	18 U.S.C. § 201(g);
	:	18 U.S.C. § 654;
	:	18 U.S.C. § 371;
	:	18 U.S.C. § 2.
	:	
	:	(Obstruction of Inquiries
	:	and Proceedings; False
	:	Statements; Falsification,
	:	Destruction and Removal of
	:	Documents; Receipt of
	:	Gratuities; Conversion of
	:	Property of Another by
	:	Government Official;
	:	Conspiracy; Aiding and
	:	Abetting)

I N D I C T M E N T

COUNT ONE

(Obstruction of Congress by NORTH
in September and October 1985)

The Grand Jury charges:

1. At all times relevant to this Indictment, the National Security Council (the "NSC") was a government entity established by the National Security Act of 1947, whose statutory members were the President of the United States, the Vice President, the Secretary of State and the Secretary of Defense. At all times relevant to this Indictment, other officials were also members of the NSC by appointment of the President. The function of the NSC was to advise the President on the integration of domestic, foreign and military policies relating to the national security, to facilitate cooperation among the military services and other departments and agencies of the government in matters involving the national security, and to review, guide and direct foreign intelligence and covert action activities. The Assistant to the President for National Security Affairs (the "National Security Advisor") was responsible for developing, coordinating and implementing national security policy as approved by the President, as well as for staffing and administering the NSC. The staff of the NSC was appointed to perform such duties as might be prescribed by the NSC in connection with the performance of its functions.

The staff of the NSC had offices located in the Old Executive Office Building ("OEOB"), Washington, D.C.

2. At all times relevant to this Indictment, the Contras were military insurgents engaged in military and paramilitary operations in Nicaragua.

3. From in or about December 1981 to on or about October 12, 1984, the United States Government, acting principally through the CIA, pursuant to written presidential findings, provided the Contras with financial support, arms and military equipment, as well as instruction, tactical and other advice, coordination, intelligence and guidance. During fiscal year 1984, Public Law 98-212 prohibited the CIA, the Department of Defense and any other agency or entity of the United States involved in intelligence activities from obligating or expending more than $24 million for direct or indirect support of military or paramilitary operations in Nicaragua. These funds were almost entirely obligated by June 1984.

4. On October 12, 1984, Public Law 98-473 was enacted and expressly prohibited the use of funds available to certain agencies and entities of the United States from being obligated or expended in support of military or paramilitary operations in Nicaragua, stating in relevant part:

> During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence

> activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

This provision of the law was commonly known as the Boland Amendment.

5. Although the Boland Amendment was modified twice, agencies and entities of the United States involved in intelligence activities were at all times between October 12, 1984 and October 17, 1986 prohibited from spending funds available to them (including, without limitation, funds for salaries and transportation) to provide lethal military or paramilitary supplies to the Contras or to participate in the planning or execution of military or paramilitary operations in Nicaragua. At no time during this period was any member of the NSC staff authorized by a presidential finding to undertake any covert or special activities with respect to Nicaragua, including any of the covert or special activities previously undertaken by the CIA. As of October 18, 1986, the provision by the CIA of military aid to the Contras was authorized again pursuant to new enactment and appropriation.

6. At all times relevant to this Indictment until November 25, 1986, the defendant OLIVER L. NORTH was a Lieutenant Colonel in the United States Marine Corps detailed to the NSC staff, where he held the position of Deputy

Director, Political-Military Affairs. Among other things, the defendant NORTH was designated to perform certain activities with respect to the Contras, counter-terrorism, and the United States initiative involving the sale of arms to elements in Iran and efforts to obtain the release of American citizens held hostage in Lebanon. In connection with these activities, the defendant NORTH from time to time used aliases, including "William Goode" and "Mr. Green." On November 25, 1986, the defendant NORTH was discharged from the NSC staff.

7. On August 16 and 20, 1985, after the publication of reports in the press alleging improper and illegal activities on behalf of the Contras by members of the NSC staff, the Chairman of the House of Representatives Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Affairs and the Chairman of the House of Representatives Permanent Select Committee on Intelligence ("HPSCI") each wrote letters on behalf of their Committees to Robert C. McFarlane in McFarlane's capacity as National Security Advisor.

8. On or before September 5 and 12, 1985, the defendant OLIVER L. NORTH prepared responses to those letters which Robert C. McFarlane signed and transmitted in response to the Chairmen of the Committees.

9. On September 12, 1985, the Chairman of HPSCI, acting on behalf of the Committee, wrote another letter to McFarlane that enclosed additional written questions, submitted by members of the Committee, about the activities of the defendant OLIVER L. NORTH in support of the Contras.

10. On or before October 7, 1985, the defendant OLIVER L. NORTH prepared responses to the Committee's questions for Robert C. McFarlane to transmit to the Chairman of HPSCI and which McFarlane did in fact transmit.

11. In September and October 1985, in the District of Columbia, the defendant OLIVER L. NORTH unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry under which inquiries and investigations were being had by committees of Congress, to wit, HPSCI and the House of Representatives Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Affairs, into the participation of the NSC in the provision of aid and assistance to the Contras, by making and causing to be made false, fictitious, fraudulent and misleading statements and representations, as set forth more fully and underscored in Counts Two through Four of this Indictment, for the purpose of concealing and causing to be concealed material facts.

(Violation of Title 18, United States Code, Sections 1505 and 2.)

COUNT TWO

(False Statements by
NORTH on September 5, 1985)

The Grand Jury further charges:

1. Paragraphs 1 through 6 of Count One of this Indictment are repeated, realleged and incorporated by reference herein as if fully set forth in this Count.

2. On August 20, 1985, the Chairman of the House of Representatives Permanent Select Committee on Intelligence ("HPSCI") wrote a letter on behalf of the Committee to Robert C. McFarlane in McFarlane's capacity as National Security Advisor. The letter referred to press accounts of alleged activities by the NSC with respect to the Contras and requested, among other things, a full report on the activities of the NSC to support the Contras after the enactment of the Boland Amendment.

3. On or before September 5, 1985, the defendant OLIVER L. NORTH prepared a response for Robert C. McFarlane to transmit to the Chairman of HPSCI and which McFarlane did in substance transmit.

4. On or about September 5, 1985, in the District of Columbia, the defendant OLIVER L. NORTH unlawfully, willfully and knowingly did make and cause to be made material false, fictitious and fraudulent statements and representations, as underscored below, to a department and agency of the United

States, to wit, HPSCI, a committee of Congress, in a matter within its jurisdiction, to wit, intelligence aspects of United States policy and activities in Nicaragua, as follows:

> This is in reply to your letter of August 20, 1985 in which you called attention to press reports of "... alleged activities by the National Security Council (staff) regarding the contras in Nicaragua ..." and asked for a full report and legal justification for any such activities. Like you, I take such charges very seriously and consequently have thoroughly examined the facts and all matters which in any remote fashion could bear upon these charges. From that review I can state with deep personal conviction that at no time did I or any member of the National Security Council staff violate the letter or spirit of the law....
>
> * * *
>
> It is equally important to stress what we did not do. <u>We did not solicit funds or other support for military or paramilitary activities either from Americans or third parties</u>. <u>We did not offer tactical advice for the conduct of their military activities or their organization</u>....

5. The underscored statements and representations were false, fictitious and fraudulent because in truth and in fact, as the defendant OLIVER L. NORTH then and there well knew and believed, among other things, the defendant NORTH and others at the NSC had solicited funds and other support for military and paramilitary activities of the Contras from Americans and third parties and had offered tactical advice for the conduct of the Contras' military activities and organization, including advice related to the destruction of helicopters, the placement in the field of Contra units, the

opening of a southern front, and the creation of a new logistical operation to support the Contras.

(Violation of Title 18, United States Code, Sections 1001 and 2.)

COUNT THREE

(False Statements by NORTH
on September 12, 1985)

The Grand Jury further charges:

1. Paragraphs 1 through 6 of Count One of this Indictment are repeated, realleged and incorporated by reference herein as if fully set forth in this Count.

2. On August 16, 1985, the Chairman of the House of Representatives Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Affairs wrote a letter, on behalf of the Subcommittee, to Robert C. McFarlane in McFarlane's capacity as National Security Advisor. The letter referred to "press reports detailing the activities of certain National Security Council staff members in providing advice and fundraising support to Nicaraguan rebel leaders" and requested "all information, including memoranda and any other documents, pertaining to any contact between Lt. Col. North and Nicaraguan rebel leaders as of enactment of the Boland Amendment in October, 1984."

3. On or before September 12, 1985, the defendant OLIVER L. NORTH prepared a response for Robert C. McFarlane to transmit to the Chairman of the Subcommittee and which McFarlane did in fact transmit.

4. On or about September 12, 1985, in the District of Columbia, the defendant OLIVER L. NORTH unlawfully, willfully

and knowingly did make and cause to be made material false, fictitious and fraudulent statements and representations, as underscored below, to a department and agency of the United States, to wit, the House of Representatives Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Affairs, a subcommittee of Congress, in a matter within its jurisdiction, to wit, United States policy toward Nicaragua, as follows:

> This is in reply to your letter of August 16, regarding the activities of members of the NSC staff in connection with the Nicaraguan democratic resistance. Like you, I take these charges very seriously and consequently have thoroughly examined the facts and circumstances which could bear upon these charges in any fashion.
>
> Based on this review, I want to assure you that my actions, and those of my staff, have been in compliance with both the spirit and the letter of the law....
>
> * * *
>
> Throughout, we have scrupulously abided by the spirit and the letter of the law. None of us has solicited funds, facilitated contacts for prospective potential donors, or otherwise organized or coordinated the military or paramilitary efforts of the resistance.
>
> * * *
>
> Mr. Chairman, like you, I am most concerned that at a time when humanitarian assistance is being extended to the UNO there be no misgivings as to the existence of any parallel efforts to provide, directly or indirectly, support for military or paramilitary activities in Nicaragua. There has not been, nor will there be, any such activities by the NSC staff....

5. The underscored statements and representations were false, fictitious and fraudulent because in truth and in fact, as the defendant OLIVER L. NORTH then and there well knew and believed, among other things, the defendant NORTH and others at the NSC had solicited funds from and facilitated contacts for prospective potential donors, including contributors to NEPL, had otherwise organized and coordinated the military and paramilitary efforts of the Contras by participating in plans to open a southern front and to create a new logistical operation to transport lethal weapons and supplies to the Contras, and had provided, directly and indirectly, support for military and paramilitary activities in Nicaragua.

(Violation of Title 18, United States Code, Sections 1001 and 2.)

COUNT FOUR

(False Statements by NORTH
on October 7, 1985)

The Grand Jury further charges:

1. Paragraphs 1 through 6 of Count One of this Indictment are repeated, realleged and incorporated by reference herein as if fully set forth in this Count.

2. On September 12, 1985, having received the letter referred to in Count Two of this Indictment and having met with Robert C. McFarlane, the Chairman of HPSCI wrote another letter, on behalf of the Committee, to McFarlane enclosing a series of questions "concerning allegations about the activities of Lieutenant Colonel Oliver North."

3. On or before October 7, 1985, the defendant OLIVER L. NORTH prepared responses to the Committee's questions for Robert C. McFarlane to transmit to the Chairman of HPSCI and which McFarlane did in fact transmit.

4. On or about October 7, 1985, in the District of Columbia, the defendant OLIVER L. NORTH unlawfully, willfully and knowingly did make and cause to be made material false, fictitious and fraudulent statements and representations, as underscored below, to a department and agency of the United States, to wit, HPSCI, a committee of Congress, in a matter within its jurisdiction, to wit, intelligence aspects of United States policy and activities in Nicaragua, as follows:

(a) Q-- When the CIA had to withdraw from their day-to-day contact with the rebels, it has been alleged in the New York Times (8 Aug 85) that Colonel North tried to fill the void, partly through helping facilitate the supplying of logistics help. Did Colonel North, in his capacity as a staff member of the National Security Council, use his influence to facilitate the movement of supplies, either raised privately in this country or otherwise, to the contras?

A-- Lieutenant Colonel North did not use his influence to facilitate the movement of supplies to the resistance.

The underscored answer was false, fictitious and fraudulent because in truth and in fact, as the defendant NORTH then and there well knew and believed, among other things, the defendant NORTH had used his influence to facilitate the movement of supplies to the resistance, including encouraging the government of a Far Eastern Country to permit the export of anti-aircraft missiles to the Contras, encouraging the provision of increased United States aid to Guatemala, officials of which had provided false end-user certificates for military equipment for the Contras, encouraging the government of Honduras to provide a multiple-entry visa for John K. Singlaub, writing a letter to Felix Rodriguez, a/k/a "Max Gomez," and participating in plans to open a southern front, build an airstrip in Costa Rica and

create a new logistical operation to transport supplies to the Contras.

(b) Q-- Has Colonel North been the focal point within the NSC staff for handling contacts with private fund raising groups, such as the World Anti-Communist League and the Council for World Freedom headed by retired Major General John K. Singlaub?

A-- No.

The underscored answer was false, fictitious and fraudulent because in truth and in fact, as the defendant NORTH then and there well knew and believed, among other things, the defendant NORTH had been the focal point within the NSC staff for handling contacts with private groups raising funds for lethal military purposes, including the National Endowment for the Preservation of Liberty ("NEPL"), the United States Council for World Freedom, and the World Anti-Communist League.

(c) Q-- General Singlaub has stated (Washington Post, 9 Aug 85) that he would often talk to Colonel North and inform him what he was doing and then state that if it was a dumb idea, for North to send him a signal. Is that your impression of the relationship between General Singlaub and Colonel North?

A-- There is no official or unofficial relationship with any member of the NSC staff regarding fund raising for the Nicaraguan democratic opposition. This includes the alleged relationship with General Singlaub.

The underscored answer was false, fictitious and fraudulent because in truth and in fact, as the defendant NORTH then and there well knew and believed, among other things, the defendant NORTH had relationships regarding fund raising for the Contras with John K. Singlaub, NEPL and individuals associated with NEPL, including Carl R. Channell, Richard R. Miller and Daniel L. Conrad.

(d) Q-- The Nicaraguan freedom fighters, in the last two months, are reported by the U.S. Embassy, Tegucigalpa, to have received a large influx of funds and equipment with some estimates of their value reaching as high as $10 million or more. Do you know where they have obtained this assistance?

A-- No.

The underscored answer was false, fictitious and fraudulent because in truth and in fact, as the defendant NORTH then and there well knew and believed, among other things, the Contras had received as a result, in part, of efforts by the defendant NORTH, military equipment worth millions of dollars through John K. Singlaub and Richard V. Secord.

(Violation of Title 18, United States Code, Sections 1001 and 2.)

COUNT FIVE

(Obstruction of Congress by NORTH
in August 1986)

The Grand Jury further charges:

1. Paragraphs 1 through 6 of Count One of this Indictment are repeated, realleged and incorporated by reference herein as if fully set forth at length.

2. On June 24, 1986, a resolution of inquiry, H. Res. 485, was introduced in the House of Representatives which, if adopted, would have directed the President to provide the House of Representatives certain information concerning the activities of Oliver L. North or any other member of the NSC staff in support of the Contras, including a complete list and description of any contact or other communication between North or any other member of the NSC staff with any private individual or any representative of a foreign government concerning the provision of funding or other assistance to the Contras, any document concerning the provision of such funding or assistance, and a complete list and description of and any document concerning any contact or other communication, directly or through intermediaries, since July 28, 1983, between North or any other member of the NSC staff and any representative of the Contras, Robert W. Owen or John K. Singlaub. The resolution then was referred jointly to the House Committee on Foreign Affairs, the House

Committee on Armed Services and the House Permanent Select Committee on Intelligence ("HPSCI") for consideration.

3. On June 25 and July 1, 1986, the Chairmen of the House Committee on Foreign Affairs and HPSCI each wrote a letter, on behalf of his Committee, to the President attaching a copy of the proposed resolution of inquiry and requesting comments on the proposed resolution no later than July 22, 1986.

4. On July 21, 1986, John M. Poindexter, on behalf of the President, wrote separate letters to the Chairmen of the House Committees on Foreign Affairs and Armed Services and HPSCI in which he expressed the Administration's strong opposition to the proposed resolution of inquiry.

5. John M. Poindexter's letters to the Chairmen of the House Committee on Foreign Affairs and the Permanent Select Committee on Intelligence were identical in substance and stated as follows:

> This is in reply to your letter to the President on June 25, 1986, requesting comments on H. Res. 485, relating to the allegations of improper activities by members of the National Security Council staff in support of the Nicaraguan resistance. The Administration strongly opposes enactment of the resolution.
>
> Last fall, in an effort to cooperate with Chairman Barnes, my predecessor, Robert C. McFarlane, met with members of your committee and the Permanent Select Committee on Intelligence. While I did not participate in these discussions, I understand that information on the specific issues raised in H. Res. 485, was provided to your Committee and that this information made it clear that the actions of the National Security Council

staff were in compliance with both the spirit and letter of the law regarding support of the Nicaraguan resistance.

Thank you for the opportunity to comment on H. Res. 485. I have forwarded similar letters to Chairman Hamilton and Chairman Aspin and sincerely hope this matter can finally be put to rest.

6. John M. Poindexter's letter to the Chairman of the House Committee on Armed Services attached copies of the other two letters and stated as follows:

I am writing to oppose H. Res. 485, a resolution of inquiry concerning allegations of improper activities of members of the staff of the National Security Council in support of the Nicaraguan resistance.

I understand the resolution has been referred jointly to your committee, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence.

Attached for your information is a copy of the response provided to the Committee on Foreign Affairs which, along with the Intelligence Committee, requested comment.

Considerable information provided by this office exists in both committees, which answered all questions in some detail. You may wish to review that information to satisfy yourself that actions by the National Security Council staff have been and continue to be within the spirit as well as the letter of the law.

7. In connection with the proposed resolution of inquiry, after the Chairman of HPSCI received John M. Poindexter's letter, he requested, on behalf of the Committee, the opportunity to meet with and ask questions of the defendant OLIVER L. NORTH. On August 6, 1986, in accordance with arrangements made and approved by Poindexter,

the defendant NORTH met in the Situation Room of the White House with members and staff of HPSCI to answer questions concerning his activities with respect to the Contras and his contacts with Robert W. Owen and John K. Singlaub.

8. In the course of that meeting, the defendant OLIVER L. NORTH made certain false, fictitious, fraudulent, and misleading statements and representations intended to obstruct the Committee's inquiry as follows: that the defendant NORTH had not given military advice to the Contras, had no knowledge of any specific military action conducted by the Contras, had not had contact with John K. Singlaub for the previous twenty months, had not raised funds in support of the Contras, had not advised or guided Robert W. Owen with respect to the Contras, and had only casual contact with Owen.

9. Those statements and representations were false, fictitious, fraudulent, and misleading because in truth and in fact, as the defendant OLIVER L. NORTH then and there well knew and believed, among other things, the defendant NORTH had given military advice to the Contras, had knowledge of specific military actions conducted by the Contras, had had contact with John K. Singlaub within the previous twenty months, had raised funds in support of the Contras, had advised and guided Robert W. Owen with respect to the Contras, and had had frequent contact with Owen.

10. On August 6, 1986, in the District of Columbia, the defendant OLIVER L. NORTH unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry under which inquiries and investigations were being had by committees of Congress, to wit, the consideration of a proposed resolution of inquiry by HPSCI and the House of Representatives Committees on Foreign Affairs and Armed Services, by making and causing to be made false, fictitious, fraudulent and misleading statements and representations to those committees of Congress for the purpose of concealing and causing to be concealed material facts.

(Violation of Title 18, United States Code, Section 1505.)

COUNT SIX

(Obstruction of Congress by NORTH in November 1986)

The Grand Jury further charges:

1. Paragraphs 1 through 6 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count

2. In early November 1986, reports appeared in the foreign and domestic press concerning the participation of the United States Government in the sale of arms to Iran.

3. On or about November 14, 1986, the Senate Select Committee on Intelligence ("SSCI") and the House of Representatives Permanent Select Committee on Intelligence ("HPSCI") gave notice to the CIA and other Executive Branch agencies and entities that the committees would be conducting hearings to inquire into the involvement of United States Government officials in the sale of arms to Iran and that the Director of Central Intelligence as well as other Executive branch officials, including John M. Poindexter, were requested to appear before the respective committees on November 21, 1986.

4. During November 1986, in preparation for the appearance of John M. Poindexter and the Director of Central Intelligence before SSCI and HPSCI, the defendant OLIVER L. NORTH participated in the preparation of a false and

misleading chronology of events relating to United States Government knowledge of and involvement in the shipment of arms to Iran, which, in its final version, falsely and misleadingly stated that no official of the United States Government learned before January 1986 that Hawk missiles had been shipped to Iran in November 1985.

5. From approximately November 21, 1986 to approximately November 25, 1986, the defendant OLIVER L. NORTH and others acting at his direction altered, destroyed, concealed and removed documents, records and papers of the NSC and its staff concerning the provision of aid and assistance to the Contras and the sale of arms to Iran.

6. From early November 1986 to on or about November 25, 1986, in the District of Columbia, the defendant OLIVER L. NORTH unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry under which inquiries and investigations were being had by committees of Congress, including the Senate Select Committee on Intelligence, the House of Representatives Permanent Select Committee on Intelligence and the House of Representatives Committee on Foreign Affairs, into the provision of aid and assistance to the Contras and the participation of the United States Government in the shipment of arms to Iran, by participating in the

preparation of a false and misleading chronology of events and altering, destroying, concealing and removing documents, records and papers of the NSC and its staff, all for the purpose of concealing and causing to be concealed material facts.

(Violation of Title 18, United States Code, Sections 1505 and 2.)

COUNT SEVEN

(Obstruction of a Presidential Inquiry
by NORTH in November 1986)

The Grand Jury further charges:

1. Paragraphs 1 through 6 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count

2. In early November 1986, reports appeared in the foreign and domestic press concerning the participation of the United States Government in the sale of arms to Iran.

3. On or about November 14, 1986, the Senate Select Committee on Intelligence ("SSCI") and the House of Representatives Permanent Select Committee on Intelligence ("HPSCI") gave notice to the CIA and other Executive Branch agencies and entities that the committees would be conducting hearings to inquire into the involvement of United States Government officials in the sale of arms to Iran and that the Director of Central Intelligence as well as other Executive branch officials, including John M. Poindexter, were requested to appear before the respective committees on November 21, 1986.

4. On November 21, 1986, the President directed the Attorney General to conduct a fact-finding inquiry to determine in advance of further congressional testimony by officials of the Executive Branch the involvement of the

United States Government and its officers and employees in the shipment of arms to Iran.

5. On November 23, 1986, at the request of the Attorney General, whose subordinates at that time had discovered, in the course of the fact-finding inquiry for the President, a document at the NSC suggesting that proceeds of the sale of arms to Iran by the United States had been diverted to the Contras, the defendant OLIVER L. NORTH met at the Department of Justice with the Attorney General and other officials of the Department of Justice to answer questions with respect to the inquiry.

6. During the course of that meeting, the defendant OLIVER L. NORTH made false, fictitious, fraudulent and misleading statements and representations to the Attorney General, as follows: that the NSC had no involvement in the diversion to the Contras of the proceeds from the sale of arms to Iran; that the Israelis determined how much of the proceeds from the arms sales were diverted to the Contras; and that the defendant NORTH had advised Adolfo Calero to open bank accounts in Switzerland to receive the monies from Israel diverted from the sale of arms to Iran.

7. Those statements and representations were false, fictitious, fraudulent and misleading because in truth and in fact, as the defendant OLIVER L. NORTH then and there well knew and believed, among other things, the defendant NORTH

and others at the NSC had undertaken activities intended to generate a differential between the price paid by Iran for the arms and the price paid to the United States Government for those arms so that monies were available to be diverted to the Contras, the diverted monies were transferred to and disbursed from bank accounts controlled by the defendant NORTH and others acting in concert with him rather than bank accounts controlled by Adolfo Calero or the Contras, and the defendant NORTH had not advised Adolfo Calero to open Swiss bank accounts to receive proceeds from the sale of arms to Iran.

8. From approximately November 21, 1986 to approximately November 25, 1986, the defendant OLIVER L. NORTH and others acting at his direction altered, destroyed, concealed and removed documents, records and papers of the NSC and its staff concerning the provision of aid and assistance to the Contras and the sale of arms to Iran.

9. From early November 1986 to on or about November 25, 1986, in the District of Columbia, the defendant OLIVER L. NORTH unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper administration of the law under which a pending proceeding was being had before a department and agency of the United States, to wit, the Attorney General's conduct of a fact-finding inquiry at the

direction of the President into the participation of the United States Government in the shipment of arms to Iran, by making false, fictitious, fraudulent and misleading statements and representations to the Attorney General and altering, destroying, concealing and removing documents, records and papers of the NSC and its staff, all for the purpose of concealing and causing to be concealed material facts.

(Violation of Title 18, United States Code, Sections 1505 and 2.)

COUNT EIGHT

(False Statements by NORTH on November 23, 1986)

The Grand Jury further charges:

1. Paragraphs 1 through 6 of Count One and Paragraphs 2 through 4 of Count Seven of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. On November 23, 1986, at the request of the Attorney General, whose subordinates at that time had discovered a document at the NSC suggesting that proceeds of the sale of arms to elements in Iran by the United States had been diverted to the Contras, the defendant OLIVER L. NORTH met at the Department of Justice with the Attorney General and other officials of the Department of Justice to answer questions with respect to the inquiry.

3. On November 23, 1986, in the District of Columbia, the defendant OLIVER L. NORTH unlawfully, willfully and knowingly made and caused to be made material false, fictitious and fraudulent statements and representations to a department and agency of the United States, to wit, the Attorney General acting on behalf of the President, in a matter within its jurisdiction, to wit, a fact-finding inquiry to determine in advance of further congressional testimony of officials of the Executive Branch the

involvement of the United States Government in the sale of arms to elements in Iran, as follows: that the NSC had no involvement in the diversion to the Contras of the proceeds from the sale of arms to elements in Iran; that the Israelis determined how much of the proceeds from the arms sales were diverted to the Contras; and that the defendant NORTH had advised Adolfo Calero to open bank accounts in Switzerland to receive the monies from Israel diverted from the sale of arms to elements in Iran.

4. Those statements and representations were false, fictitious and fraudulent because in truth and in fact, as the defendant OLIVER L. NORTH then and there well knew and believed, among other things, the defendant NORTH and others at the NSC had undertaken activities intended to generate a differential between the price paid on behalf of elements in Iran for the arms and the price transmitted to the United States Government for those arms so that monies were available to be diverted to the Contras, the diverted monies were transferred to and disbursed from bank accounts controlled by the Enterprise rather than bank accounts controlled by Adolfo Calero or the Contras, and the defendant NORTH had not advised Adolfo Calero to open Swiss bank accounts to receive proceeds from the sale of arms to elements in Iran.

(Violation of Title 18, United States Code, Section 1001.)

COUNT NINE

(Concealing, Removing, Mutilating, Obliterating, Falsifying and Destroying Official Documents by NORTH)

The Grand Jury further charges:

1. Paragraphs 1 through 6 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. The NSC, as an entity of the Executive Branch, published and disseminated to its staff an Administrative Manual that set forth procedures to ensure that documentary materials received or developed by an employee, detailee or consultant during his tenure on the NSC staff were treated as official records and were neither removed nor destroyed. To this end, the NSC Secretariat maintained a three-tiered system of records management that logged, tracked and controlled the dissemination of documents received or created at the NSC. The regulations of the NSC required that the originals of classified and logged documents be deposited and maintained in the central files of the NSC Secretariat.

3. Between approximately the middle of November 1986 and approximately November 25, 1986, in the District of Columbia, the defendant OLIVER L. NORTH, having custody of records, papers and documents of the NSC, unlawfully, willfully and knowingly did conceal, remove, mutilate, obliterate, falsify and destroy and did cause to be

concealed, removed, mutilated, obliterated, falsified and destroyed records, papers and documents filed and deposited in a public office, to wit, records of the NSC and its staff, including but not limited to original logged and classified documents from the central files of the NSC Secretariat, concerning the provision of aid and assistance to the Contras and the sale of arms to elements in Iran.

(Violation of Title 18, United States Code, Sections 2071(b) and 2.)

COUNT TEN

(Receipt of an Illegal Gratuity by NORTH from Secord: The Security System)

The Grand Jury further charges:

1. Paragraphs 1 through 6 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. In the spring and summer of 1986, in the District of Columbia and elsewhere, the defendant OLIVER L. NORTH, a United States Government official, unlawfully, willfully and knowingly and otherwise than as provided by law for the roper discharge of official duty, directly and indirectly, did accept, receive and agree to receive a thing of value personally and for himself, to wit, a security system at his residence valued at approximately $13,800, from Richard V. Secord, for and because of official acts performed and to be performed by the defendant NORTH in his official capacity, to wit, the referral by the defendant NORTH of activities to Secord and Albert Hakim and his facilitation of those activities, including activities related to the support of military and paramilitary operations in Nicaragua by the Contras and the government-sponsored Iran initiative.

(Violation of Title 18, United States Code, Sections 201(g)(recodified effective December 10, 1986 as Title 18, United States Code, Section 201(c)(1)(B)) and 2.)

COUNT ELEVEN

(Conversion of Traveler's Checks by NORTH)

The Grand Jury further charges:

1. Paragraphs 1 through 6 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. From in or about February 1985 to in or about August 1985, the defendant OLIVER L. NORTH received in excess of $90,000 in traveler's checks from Adolfo Calero, a leader of the Contras, on the representation and understanding that the traveler's checks would be used to support efforts to obtain the release of American citizens held hostage in Lebanon and for Contra-related expenses.

3. From April 1985 to July 1986, the defendant OLIVER L. NORTH used and caused to be used at least $4,300 of those traveler's checks for his own personal purposes and expenditures.

4. From April 1985 to July 1986, in the District of Columbia and elsewhere, the defendant OLIVER L. NORTH, being an employee of the United States, unlawfully, willfully and knowingly embezzled and wrongfully converted to his own use the money or property of another, to wit, approximately $4,300 in traveler's checks the defendant NORTH received from Adolfo Calero, which came into his possession and under his

control in the execution of his public office and under color and claim of his authority as an employee of the NSC.

(Violation of Title 18, United States Code, Section 654.)

COUNT TWELVE

(Conspiracy by NORTH and Others to Defraud the United States, the Department of the Treasury and the IRS)

The Grand Jury further charges:

1. Paragraphs 1 through 6 of Count One of this Indictment are repeated, realleged and incorporated by reference herein as though fully set forth at length.

INTRODUCTION

2. At all times relevant to this Indictment, the National Endowment for the Preservation of Liberty ("NEPL") was a corporation established under the non-profit corporation law of the District of Columbia. On December 12, 1984, the United States Internal Revenue Service (the "IRS") had granted NEPL an exemption from federal income taxation, pursuant to Section 501(c)(3) of the Internal Revenue Code, thereby permitting NEPL to solicit and obtain contributions that could be taken as charitable deductions on its contributors' federal income tax returns, pursuant to Section 170(a)(1) of the Internal Revenue Code. The granting of that exemption by the IRS was based, in part, on the representation by NEPL in its application for the exemption and in its supporting materials that it was organized, operated and to be operated exclusively as a non-profit, educational and charitable organization devoted to the study, analysis and

evaluation of the American socio-economic and political system and that contributions to NEPL would be used solely for those purposes. At all times relevant to this Indictment, Carl R. Channell was the President of NEPL and its chief operating officer, and Daniel L. Conrad was the Executive Director of NEPL and functioned as Channell's deputy.

3. At all times relevant to this Indictment, International Business Communications ("IBC") was a public relations firm located in Washington, D.C., and Richard R. Miller was a principal of IBC.

THE CONSPIRACY AND ITS OBJECTS

4. From the spring or summer of 1985 to the date of the filing of this Indictment, in the District of Columbia and elsewhere, the defendant OLIVER L. NORTH, and others known and unknown to the Grand Jury, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together and with each other to defraud the United States of America, the Treasury of the United States and the IRS by impeding, impairing, defeating and obstructing the lawful governmental functions of the IRS in the ascertainment, evaluation, assessment and collection of income taxes.

5. It was an object of the conspiracy to defraud and deprive the IRS and the Treasury of the United States of

revenue to which it was entitled by using NEPL, an organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code and applicable regulations, for an improper purpose, namely, to solicit contributions to purchase military and other types of non-humanitarian aid for the Contras.

6. It was a further object of the conspiracy to defraud and deprive the IRS and the Treasury of the United States of revenue to which it was entitled by inducing contributors to contribute monies to NEPL on the false representation that such contributions would be tax-deductible when, in truth and in fact, such contributions were not deductible since they were to be used for a non-exempt, non-deductible purpose, namely, to purchase military and other types of non-humanitarian aid for the Contras.

7. It was a further object of the conspiracy to have the Treasury of the United States subsidize the purchase of military and other types of non-humanitarian aid in support of military and paramilitary operations by the Contras by raising money for such aid through purportedly tax-deductible contributions to NEPL.

THE MEANS OF THE CONSPIRACY

8. In the spring of 1985, in order to support military and paramilitary activities in Nicaragua by the Contras, the defendant OLIVER L. NORTH began raising money through NEPL. He and his co-conspirators arranged for NEPL to sponsor briefings concerning the status of the war in Nicaragua and the needs of the Contras for groups of prospective contributors to NEPL at the White House and the OEOB. Following these briefings the defendant NORTH and his co-conspirators held meetings at the Hay-Adams Hotel, Washington, D.C., at which prospective contributors to NEPL were directly solicited to make purportedly tax-deductible contributions to NEPL for financial and other material aid to the Contras.

9. The conspirators also arranged, as a further means of inducing contributions to NEPL for the Contras, private meetings between prospective contributors and the defendant OLIVER L. NORTH at the defendant NORTH's office in the OEOB, at the Hay-Adams Hotel, and elsewhere, at which the defendant NORTH provided briefings to contributors explaining the military and paramilitary needs of the Contras. Prior to some of these private briefings, the defendant NORTH was advised by his co-conspirators of the amount of money that would be solicited from a particular contributor immediately following the private meeting. These private briefings

included, from time to time, a discussion by the defendant NORTH of the need for money for aircraft and specific lethal military weapons and equipment and the cost of each specific item. At the time of these private briefings, the defendant NORTH well knew that the contributors to whom he provided these private briefings would be solicited directly thereafter by his co-conspirators for contributions to purchase the specified aircraft and lethal military weapons and equipment and other items.

10. Immediately following these private briefings by the defendant OLIVER L. NORTH, officers, employees and associates of NEPL, including Carl R. Channell and others, solicited purportedly tax-deductible contributions from prospective contributors to NEPL, based on the specific needs and costs described to the contributors by the defendant NORTH.

11. The defendant OLIVER L. NORTH traveled outside of Washington, D.C., to meet prospective contributors to NEPL and discuss the specific military and paramilitary needs of the Contras.

12. The defendant OLIVER L. NORTH prepared and helped prepare lists of military and other needs of the Contras to be used in solicitations of prospective NEPL contributors. The defendant NORTH provided to his co-conspirators the prices of specific military weapons, including SAM-7

missiles, Blowpipe missiles and C-4 plastic explosives, and other equipment, including aircraft, so that prospective NEPL contributors could be solicited to help purchase those items.

13. The defendant OLIVER L. NORTH thanked in person and by telephone individuals who had made contributions to NEPL to support the military and paramilitary operations of the Contras. The defendant NORTH also wrote acknowledgements on official NSC stationery to contributors to NEPL thanking them for their support for the Contras. In addition, the conspirators and others arranged for a number of individuals who had made substantial contributions to the Contras through NEPL to have White House meetings and photograph opportunities with the President.

14. From the fall of 1985 to December 1986, the defendant OLIVER L. NORTH controlled the disposition of funds raised for the Contras by NEPL.

15. In order to disguise the fact that NEPL, a 501(c)(3) organization, was the source of monies to purchase military and other types of non-humanitarian aid for the Contras, and in order to conceal the role of the defendant OLIVER L. NORTH in controlling the distribution of the funds raised through NEPL, the conspirators arranged for such monies to be transferred from NEPL to IBC and then to foreign corporate bank accounts in the Cayman Islands and Switzerland controlled by the defendant NORTH before they were

distributed to the ultimate recipients. Between approximately June 1, 1985 and November 25, 1986, at direction of the defendant NORTH, NEPL transferred approximately $3.2 million to IBC to aid the Contras, of which approximately $1.7 million was transferred at the direction of the defendant NORTH to the bank account of Lake Resources.

16. From the $3.2 million raised through NEPL purportedly for the Contras by the defendant OLIVER L. NORTH and his co-conspirators, the defendant NORTH directed that the following expenditures be made: over $200,000 for the benefit of Mousalreza Abrahim Zadeh, a/k/a "Prince Al-Masoudi," $75,000 for the Institute for Terrorism and Subnational Conflict to provide employment for the defendant NORTH's associate, Robert W. Owen, and $450,000 for World Affairs Counselors, Inc., an entity in the Cayman Islands controlled by Richard R. Miller, for the personal benefit of Miller and Francis D. Gomez in compensation for their assistance to the defendant NORTH in raising funds for the defendant NORTH and transferring those funds through foreign and domestic bank accounts.

OVERT ACTS

17. The following overt acts, among others, were knowingly committed and caused to be committed, in the

District of Columbia and elsewhere, by the defendant OLIVER L. NORTH and his co-conspirators in furtherance of the conspiracy and to effect the objects thereof:

(1) In late May or early June 1985, in Washington, D.C., the defendant OLIVER L. NORTH placed a telephone call to Richard R. Miller requesting funds for the Contras.

(2) In June 1985, the defendant OLIVER L. NORTH and Richard R. Miller caused John Ramsey, a contributor to NEPL, to transfer $10,000 by wire from Wichita Falls, Texas, to a Contra bank account.

(3) On June 27, 1985, at the OEOB, Washington, D.C., the defendant OLIVER L. NORTH presented a briefing relating to Nicaragua for prospective contributors to NEPL.

(4) On July 9, 1985, at the Hay-Adams Hotel, Washington, D.C., the defendant OLIVER L. NORTH met with Carl R. Channell, Daniel L. Conrad and Richard R. Miller.

(5) On September 11, 1985, in Dallas, Texas, the defendant OLIVER L. NORTH met with Carl R. Channell, Daniel L. Conrad and Nelson Bunker Hunt, a contributor to NEPL.

(6) On September 17, 1985, in Dallas, Texas, the defendant OLIVER L. NORTH, Carl Channell and Daniel L. Conrad caused Nelson Bunker Hunt to issue a check in the amount of $237,500 payable to NEPL.

(7) On September 20, 1985, in Washington, D.C., the defendant OLIVER L. NORTH caused Richard Miller to

transfer $130,000 in NEPL funds from the bank account of IBC in Washington, D.C., to the bank account of Lake Resources in Geneva, Switzerland.

(8) On September 26, 1985, in Washington, D.C., the defendant OLIVER L. NORTH caused Richard R. Miller to transfer $100,000 in NEPL funds from IBC to the bank account in the Cayman Islands of I.C. Inc., an entity controlled by Richard R. Miller, which funds were transferred subsequently to the bank account of Lake Resources in Geneva, Switzerland, at the direction of the defendant NORTH.

(9) On October 17, 1985, at the OEOB, Washington, D.C., the defendant OLIVER L. NORTH presented a briefing relating to Nicaragua for prospective contributors to NEPL.

(10) On October 18, 1985, at the OEOB, Washington, D.C., the defendant OLIVER L. NORTH met with Carl R. Channell and Patricia D. Beck, a contributor to NEPL.

(11) On October 18, 1985, in Washington, D.C., the defendant OLIVER L. NORTH and Carl R. Channell caused Patricia D. Beck to issue a check payable to NEPL in the amount of $44,000.

(12) On or about November 1, 1985, in Washington, D.C., the defendant OLIVER L. NORTH caused Richard R. Miller to transfer $150,000 in NEPL funds from the bank account of I.C. Inc. in the Cayman Islands to the bank account of Lake Resources in Geneva, Switzerland.

(13) On November 7, 1985, at the Hay-Adams Hotel, Washington, D.C., the defendant OLIVER L. NORTH met with Carl R. Channell, Richard R. Miller and Barbara Newington, a contributor to NEPL.

(14) In late November and early December 1985, the defendant OLIVER L. NORTH, Carl R. Channell and Richard R. Miller caused Barbara Newington to mail stock certificates valued at approximately $1 million to NEPL in Washington, D.C.

(15) On November 21, 1985, at the OEOB, Washington, D.C., the defendant OLIVER L. NORTH presented a briefing relating to Nicaragua for prospective contributors to NEPL.

(16) On November 22, 1985, at the OEOB, Washington, D.C., the defendant OLIVER L. NORTH met with C. Thomas Clagett, Jr., a contributor to NEPL.

(17) On December 16, 1985, in Washington, D.C., the defendant OLIVER L. NORTH caused Richard R. Miller to transfer $300,000 in NEPL funds from the bank account of IBC in Washington, D.C., to the bank account of Lake Resources in Geneva, Switzerland.

(18) On January 16, 1986, in Washington, D.C., the defendant OLIVER L. NORTH and Carl R. Channell caused C. Thomas Clagett, Jr., to issue a check in amount of $20,000 payable to NEPL.

(19) On or about January 21, 1986, in Washington, D.C., the defendant OLIVER L. NORTH caused Richard R. Miller to transfer $360,000 in NEPL funds from the bank account of I.C. Inc. in the Cayman Islands to the bank account of Lake Resources in Geneva, Switzerland.

(20) On March 27, 1986, at the OEOB, Washington, D.C., the defendant OLIVER L. NORTH presented a briefing relating to Nicaragua for prospective contributors to NEPL.

(21) On March 28, 1986, at the Hay-Adams Hotel, Washington, D.C., the defendant OLIVER L. NORTH met with Carl R. Channell and William O'Boyle, a contributor to NEPL.

(22) On March 31, 1986, at the Hay-Adams Hotel, Washington, D.C., the defendant OLIVER L. NORTH and Carl R. Channell caused William O'Boyle to deliver a check in the amount of $130,000 payable to NEPL.

(23) On April 11, 1986, at the Hay-Adams Hotel, Washington, D.C., the defendant OLIVER L. NORTH met with Carl R. Channell and Ellen Garwood, a contributor to NEPL.

(24) On April 11, 1986, the defendant OLIVER L. NORTH caused Richard R. Miller to transfer $650,000 in NEPL funds

from the bank account of I.C. Inc. in the Cayman Islands to the bank account of Lake Resources in Geneva, Switzerland.

(25) On April 15, 1986, the defendant OLIVER L. NORTH and Carl R. Channell caused Ellen Garwood to transfer by wire $470,000 from a bank account in Austin, Texas, to a NEPL bank account in Washington, D.C.

(26) On April 15, 1986, the defendant OLIVER L. NORTH and Carl R. Channell caused Ellen Garwood to transfer by wire stocks valued at approximately $1.15 million from Austin, Texas, to NEPL's brokerage account in Washington, D.C.

(27) On May 19, 1986, the defendant OLIVER L. NORTH and Carl R. Channell caused Ellen Garwood to transfer by wire $350,000 from a bank account in Austin, Texas, to a NEPL bank account in Washington, D.C.

(Violation of Title 18, United States Code, Section 371.)

A TRUE BILL:

FOREPERSON

16 March 1988

LAWRENCE E. WALSH
INDEPENDENT COUNSEL

RECEIVED

AUG 28 1989

JAMES F. DAVEY, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on January 28, 1987

UNITED STATES OF AMERICA	:	**Criminal No. 88-0080-01**
	:	
v.	:	
	:	
JOHN M. POINDEXTER,	:	
	:	**Violations:**
Defendant.	:	**18 U.S.C. § 371;**
	:	**18 U.S.C. § 1505;**
	:	**18 U.S.C. § 1001;**
	:	**18 U.S.C. § 2.**
	:	
	:	
	:	
	:	**(Conspiracy; Obstruction**
	:	**of Inquiries and**
	:	**Proceedings; False**
	:	**Statements;**
	:	**Aiding and**
	:	**Abetting)**

I N D I C T M E N T

013202

COUNT ONE

(Conspiracy by POINDEXTER, North, Secord and Hakim)

The Grand Jury charges:

INTRODUCTION

1. At all times relevant to this Indictment, the National Security Council (the "NSC") was a government entity established by the National Security Act of 1947, whose statutory members were the President of the United States, the Vice President, the Secretary of State and the Secretary of Defense. At all times relevant to this Indictment, other officials were also members of the NSC by appointment of the President. The function of the NSC was to advise the President on the integration of domestic, foreign and military policies relating to the national security, to facilitate cooperation among the military services and other departments and agencies of the government in matters involving the national security, and to review, guide and direct foreign intelligence and covert action activities. The Assistant to the President for National Security Affairs (the "National Security Advisor") was responsible for developing, coordinating and implementing national security policy as approved by the President, as well as for staffing and administering the NSC. The staff of the NSC was appointed to perform such duties as might be prescribed by the NSC in

connection with the performance of its functions. The staff of the NSC had offices located in the Old Executive Office Building ("OEOB"), Washington, D.C.

2. At all times relevant to this Indictment, the Contras were military insurgents engaged in military and paramilitary operations in Nicaragua.

3. From in or about December 1981 to on or about October 12, 1984, the United States Government, acting principally through the CIA, pursuant to written presidential findings, provided the Contras with financial support, arms and military equipment, as well as instruction, tactical and other advice, coordination, intelligence and guidance. During fiscal year 1984, Public Law 98-212 prohibited the CIA, the Department of Defense and any other agency or entity of the United States involved in intelligence activities from obligating or expending more than $24 million for direct or indirect support of military or paramilitary operations in Nicaragua. These funds were almost entirely obligated by June 1984.

4. On October 12, 1984, Public Law 98-473 was enacted and expressly prohibited the use of funds available to certain agencies and entities of the United States from being obligated or expended in support of military or paramilitary operations in Nicaragua, stating in relevant part:

> During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the

> United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

This provision of the law was commonly known as the Boland Amendment.

5. Although the Boland Amendment was modified twice, agencies and entities of the United States involved in intelligence activities were at all times between October 12, 1984 and October 17, 1986 prohibited from spending funds available to them (including, without limitation, funds for salaries and transportation) to provide lethal military or paramilitary supplies to the Contras or to participate in the planning or execution of military or paramilitary operations in Nicaragua. As of October 18, 1986, the provision by the CIA of military aid to the Contras was authorized again pursuant to new enactment and appropriation.

6. Beginning with the overthrow of the Shah of Iran on or about January 16, 1979 and the seizure of the United States embassy in Iran and its staff on November 4, 1979, relations between the United States Government and the government of Iran were characterized by mutual hostility and tension.

7. As of June 1985, seven American citizens, who had been kidnapped by terrorists in Lebanon, were being held hostage.

8. At all times relevant to this Indictment until November 25, 1986, the defendant JOHN M. POINDEXTER was an officer in the United States Navy who was detailed to the NSC. From October 17, 1983 to December 4, 1985, the defendant POINDEXTER held the position of Deputy Assistant to the President for National Security Affairs and assisted Robert C. McFarlane, the National Security Advisor, in the supervision and direction of the NSC staff. On December 4, 1985, the defendant POINDEXTER succeeded McFarlane as National Security Advisor. The defendant POINDEXTER held that position until November 25, 1986, when he resigned. The defendant POINDEXTER assumed the title of Vice Admiral on December 24, 1984. At all times relevant to this Indictment after May 15, 1985, the defendant POINDEXTER held the rank of Vice Admiral.

9. At all times relevant to this Indictment until November 25, 1986, Oliver L. North was a Lieutenant Colonel in the United States Marine Corps detailed to the NSC staff, where he held the position of Deputy Director, Political-Military Affairs. Among other things, North was designated to perform certain activities with respect to the Contras, counter-terrorism, and the United States initiative involving the sale of arms to elements in Iran and efforts to obtain the release of American citizens held hostage in Lebanon. In connection with these activities, North from time to time used aliases, including

"William Goode" and "Mr. Green." On November 25, 1986, North was discharged from the NSC staff.

10. At all times relevant to this Indictment, Richard V. Secord was President of Stanford Technology Trading Group International ("STTGI"), with offices located in Vienna, Virginia. From September 11, 1975 to July 11, 1978, Secord, while on active duty in the United States Air Force, served as Chief of the Air Force Section of the United States Military Assistance Advisory Group in Iran. From April 13, 1981 to April 30, 1983, Secord served as Deputy Assistant Secretary of Defense for International Security Affairs. When he retired from active duty in the Air Force on May 1, 1983, Secord held the rank of Major General. Beginning in the fall of 1984, Secord undertook to provide supplies, including lethal military supplies, to the Contras. Beginning in the fall of 1985, Secord also undertook to assist in the transfer of weapons to Iran on behalf of the United States in an initiative involving the sale of arms to elements in Iran and efforts to obtain the release of American citizens held hostage in Lebanon. In connection with these activities, Secord from time to time used the aliases "Richard Copp" and "Major General Richard Adams."

11. At all times relevant to this Indictment, Albert Hakim was the Chairman of the Board of Directors of STTGI. Beginning in the fall of 1984, Hakim organized the corporate and financial arrangements for an effort to provide supplies,

including lethal military supplies, to the Contras, and beginning in late 1985 or early 1986, Hakim participated on behalf of the United States in an initiative involving the sale of arms to elements in Iran and efforts to obtain the release of American citizens held hostage in Lebanon. In connection with these activities, Hakim from time to time used the aliases "Abe" and "Ibrahim Ibrahamian."

THE CONSPIRACY AND ITS OBJECTS

12. From the late spring or early summer of 1985 up to and including at least December 1986, in the District of Columbia and elsewhere, the defendant JOHN M. POINDEXTER, Oliver L. North, Richard V. Secord, and Albert Hakim, together with others known and unknown to the Grand Jury, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, including:

(1) Violations of Title 18, United States Code, Section 1505, Obstructing Inquiries Being Conducted By Congress, as alleged in Counts Two and Three of this Indictment;

(2) Violations of Title 18, United States Code, Section 1001, Making False and Misleading Statements to Government Agencies, including Committees of

Congress, as alleged in Counts Four and Five of this Indictment;

(3) Violations of Title 18, United States Code, Section 2071, Falsifying, Removing and Destroying Official Documents of the United States, as alleged in Former Count Sixteen of this Indictment.

THE BACKGROUND OF THE CONSPIRACY

13. In the fall of 1984, Oliver L. North and others undertook through their governmental offices to continue and conceal various activities in support of the Contras.

14. Beginning in late 1984 and continuing thereafter through the middle of 1985, Oliver L. North gave military intelligence, advice and direction to the Contras, including military intelligence provided by agencies and entities involved in intelligence activities. To give such intelligence, advice and direction in a manner that would conceal North's role in such activities, North, on numerous occasions, utilized intermediaries as couriers to the Contras.

15. In order to continue activities in support of the Contras and to conceal those activities, Oliver L. North enlisted and utilized private individuals to provide lethal military weapons and supplies to the Contras.

16. In the second half of 1984, Oliver L. North arranged for Richard V. Secord to obtain and sell military

weapons and supplies to the Contras. Albert Hakim joined with Secord in these activities.

17. Oliver L. North assisted Richard V. Secord and Albert Hakim in this effort by, among other things, facilitating contacts between Secord and representatives of the Contras, including Adolfo Calero, a Contra leader.

18. Beginning in at least the fall of 1984, Oliver L. North ascertained the military requirements of the Contras, participated in the selection of military weapons and supplies for them and expedited and facilitated the purchase of these weapons and supplies by the Contras from Richard V. Secord and Albert Hakim.

19. From approximately January 1985 to approximately June 1985, Richard V. Secord and Albert Hakim, among others, obtained and sold to the Contras substantial amounts of military equipment, including automatic rifles, mortars and mortar rounds, anti-aircraft missiles and launchers, grenades and grenade launchers, recoilless rifles, machine guns and millions of rounds of ammunition.

20. In or before the middle of 1985, Oliver L. North, Richard V. Secord and Albert Hakim and others commenced an enterprise (the "Enterprise") that was intended, among other things, to support military and paramilitary operations in Nicaragua by the Contras and to conduct covert action operations.

21. In the middle of 1985, Oliver L. North and Richard V. Secord, through the Enterprise, took control and direction of the selection and provision of a significant portion of the lethal military weapons and supplies for the Contras. North and Secord informed certain Contra leaders that, thereafter, they would provide the Contras with lethal military weapons and supplies instead of funds with which to purchase such weapons and supplies. Thereafter, North and Secord established a clandestine supply network to support military and paramilitary operations in Nicaragua by the Contras and, among other things, undertook to enable the Contras to engage in military operations in southern Nicaragua (the "southern front").

22. Beginning in or before the middle of 1985, Albert Hakim, acting in coordination with Oliver L. North and Richard V. Secord, provided and oversaw a clandestine financial infrastructure for the Enterprise by making available to the Enterprise the foreign corporations and Swiss bank accounts already under his control and by creating additional foreign corporations and opening additional Swiss bank accounts. The principal corporation utilized thereafter by the Enterprise was Lake Resources Inc. ("Lake Resources"). In July 1985, Hakim caused a bank account in the name of Lake Resources to be opened at the Credit Suisse Bank in Geneva, Switzerland. By November 1986, the financial network of the Enterprise also included the following foreign corporations with foreign bank accounts: Hyde

Park Square Corp., Dolmy Business Inc., Albon Values Corp., Gulf Marketing Consultants Ltd., Toyco Inc., Udall Research Corp. and Defex S.A.

23. By late 1985, Oliver L. North had advised the defendant JOHN M. POINDEXTER of aspects of the Enterprise's operation.

24. From the late spring or early summer of 1985 through November 1986, Richard V. Secord, acting in coordination with Oliver L. North, directly and through others created and maintained a logistical infrastructure for the Enterprise by, among other things, purchasing aircraft, recruiting and employing pilots, crews, and other individuals and arranging for the use of a military airfield and warehouse in a foreign country ("Country A"). North and Secord and those acting in concert with them concealed their role in creating and maintaining this infrastructure by, among other things, instructing the individuals they had recruited not to reveal the participation of North and Secord in these activities and the use of intervening corporate entities.

25. From the late spring or early summer of 1985 through November 1986, Oliver L. North and others took steps to assist the Contras in opening the southern front, in part by secretly obtaining the assistance of an official of the CIA stationed in Costa Rica. Together with that official of the CIA, and in order to conceal their participation in these activities, North enlisted an individual and utilized Udall Research Corp., a

Panamanian corporation, to acquire land in Costa Rica and construct an airstrip there for use in connection with the delivery of military weapons and supplies to the southern front.

26. From late 1985 through November 1986, the Enterprise, under the direction of Oliver L. North and Richard V. Secord, purchased and delivered hundreds of thousands of pounds of lethal military weapons and supplies to Central America for use in Nicaragua by the Contras.

27. From 1985 to November 1986, Oliver L. North acted as a fundraiser for the Contras and for the Enterprise by soliciting and obtaining funds from various sources purportedly for the Contras, directing a part of those funds to the Contras, and directing a substantial part of those funds to bank accounts in the control of the Enterprise to be expended by Richard V. Secord and Albert Hakim in coordination with North.

28. In the spring and early summer of 1985, in order to fund the Enterprise, Oliver L. North began raising money through the National Endowment for the Preservation of Liberty ("NEPL") by, among other things, arranging meetings with officers of and potential contributors to NEPL and others participating in soliciting contributions for lethal military and other supplies for the Contras.

29. From the fall of 1985 to December 1986, Oliver L. North controlled the disposition of funds raised for the Contras through NEPL.

30. In order to conceal the role of Oliver L. North in controlling the disposition of the funds raised through NEPL, North arranged for such monies to be transferred from NEPL through an intermediary entity to foreign corporate bank accounts under his control in the Cayman Islands and Switzerland. Between approximately June 1, 1985 and November 25, 1986, North and others in concert with him raised approximately $3.2 million through NEPL, of which approximately $1.7 million was transferred at the direction of North to the bank account of Lake Resources, thereby placing such funds at the disposal of the Enterprise.

31. In the last half of 1985, the government of Israel undertook an initiative to Iran, under which the government of Israel transferred to Iran approximately 500 TOW missiles originally obtained from the United States. In November 1985, with the knowledge and approval of the defendant JOHN M. POINDEXTER, Oliver L. North undertook to assist and coordinate an arms shipment of Hawk missiles to Iran by the government of Israel, as part of its initiative to Iran. In doing so, he secured the assistance of Richard V. Secord.

32. In order to hire aircraft to transport several shipments of Hawk missiles to Iran, Oliver L. North caused approximately $1 million from certain Israeli participants in the transaction to be deposited into the bank account of Lake Resources, a bank account used and controlled by the Enterprise to finance the purchase and delivery of weapons and supplies for

the Contras. After all of the shipments of Hawk missiles to Iran, except the first, were cancelled, the Enterprise's account, Lake Resources, was left with an unused balance of several hundred thousand dollars.

33. In December 1985, certain of the conspirators caused thousands of pounds of lethal military supplies to be transported to Central America for use by the Contras.

34. On January 17, 1986, the defendant JOHN M. POINDEXTER orally briefed the President from a memorandum prepared by Oliver L. North, after which the President signed a finding authorizing the sale of arms by the United States Government to elements in Iran in support of a United States initiative to establish a more moderate government in Iran, to obtain intelligence relating to Iran, and to secure the release of American hostages held in Lebanon.

35. In January 1986, the defendant JOHN M. POINDEXTER and Oliver L. North arranged for Richard V. Secord, and through him the Enterprise, to assist the United States initiative to Iran by acting as an agent and intermediary of the United States Government, under the direction of the defendant POINDEXTER and North, to receive for the United States funds in payment of the weapons to be shipped to Iran, to transmit funds to the CIA and to transport weapons from the United States to Iran. By selecting Secord, and through him the Enterprise, to participate in the United States initiative, the defendant

POINDEXTER and North created circumstances under which the Enterprise would be able secretly to control the proceeds from the sale of arms to elements in Iran and divert a substantial part of such proceeds into the financial network of the Enterprise subject to further direction by the defendant POINDEXTER and North.

36. In January 1986, as part of the United States initiative, Oliver L. North negotiated on behalf of the United States with a representative of elements in Iran the transfer of 4,000 TOW missiles to Iran at a price of $10,000 per TOW missile, with 1,000 of the 4,000 TOW missiles to be delivered in a first installment. At the same time, North directed the representative of the Iranians to deposit the $10 million payment for the first 1,000 TOW missiles into the Enterprise's secret Swiss bank account -- Lake Resources, the same bank account then used to finance the Contra resupply operation. North also advised the defendant JOHN M. POINDEXTER that the representative of the Iranians had offered to pay $10,000 per missile.

37. In early 1986, Oliver L. North and Richard V. Secord agreed to retain for the Enterprise a substantial part of the $10 million payment for the first shipment of TOW missiles by having Secord transmit to the United States through the CIA substantially less than was paid for these missiles on behalf of the Iranians. In furtherance of this plan, North told an official of the CIA that a price of $6,000 per TOW missile was

too high and should be reduced, without revealing that the Iranian representative had already offered to pay $10,000 per missile. Thereafter, the price to be paid to the CIA was reduced to approximately $3,469 per TOW missile, for a total of $3.7 million for 1,000 TOW missiles, including costs.

38. In February 1986, one of the Enterprise's bank accounts, Lake Resources, received $10 million in payment on behalf of Iran for the 1,000 TOW missiles pursuant to the agreement with the representative of elements in Iran negotiated by Oliver L. North on behalf of the United States.

39. In February 1986, certain of the conspirators, in turn, directed that only approximately $3.7 million be transmitted to the CIA, thus leaving a remainder of over $6 million in the Enterprise account. At that time, the United States Government shipped 1,000 TOW missiles to Iran. Certain of the conspirators caused substantial sums of money from Enterprise bank accounts to be spent to purchase and deliver military weapons and supplies for the Contras.

40. In early March 1986, certain of the conspirators caused thousands of pounds of lethal military supplies to be delivered to Central America for the Contras.

41. In April 1986, certain of the conspirators caused thousands of pounds of lethal military supplies to be delivered to Central America for the Contras.

42. In the spring of 1986, as part of the continuing United States initiative, pursuant to the activities of the defendant JOHN M. POINDEXTER and Oliver L. North, the United States Government agreed to sell Hawk missile spare parts to elements in Iran at a total price of $15 million. North, among other things, directed his assistant to calculate the price to be charged the Iranian representative for the Hawk spare parts by multiplying by a factor of 3.7 the prices for those spare parts contained in a United States Government price list.

43. In May 1986, at Oliver L. North's direction, $15 million was deposited on behalf of elements in Iran into an Enterprise bank account. At about the same time, an Enterprise bank account received $1.46 million from other sources. Thereafter, certain of the conspirators caused only $6.5 million to be transmitted to the United States through the CIA for the Hawk spare parts for Iran and TOW missiles for Israel to replenish Israel for its transfer of TOW missiles to Iran in August and September 1985, thus leaving a remainder of almost $10 million in the bank accounts of the Enterprise. North then advised the defendant JOHN M. POINDEXTER that a substantial amount was available for the support of the Contras. The defendant JOHN M. POINDEXTER, Oliver L. North and Richard V. Secord caused the United States Government to ship the agreed upon Hawk missile spare parts to Israel for eventual delivery to Iran. Certain of the conspirators caused substantial sums of

money from Enterprise bank accounts to be spent to purchase and deliver military weapons and supplies for the Contras.

44. In May 1986, certain of the conspirators caused thousands of pounds of arms to be delivered to Central America for the Contras.

45. In October and November 1986, as part of the continuing United States initiative, the defendant JOHN M. POINDEXTER, Oliver L. North and Richard V. Secord caused the United States Government to ship 500 TOW missiles to Iran at a total price of $3.6 million. Pursuant to the agreement negotiated on behalf of the United States Government, the Iranian representatives paid into an Enterprise bank account approximately $3.6 million in payment for the missiles. Certain of the conspirators, in turn, caused only approximately $2.037 million to be transmitted to the United States through the CIA, thus leaving a remainder of approximately $1.5 million in the bank account of the Enterprise. The 500 TOW missiles were then delivered.

46. In June 1986, in a further effort to raise funds for the Enterprise, Oliver L. North attempted to divert to the Enterprise a $10 million contribution from Brunei intended for humanitarian aid to the Contras by undertaking to supply an official of the Department of State with the bank account number of Lake Resources instead of the number of a Contra bank account, which the official had requested.

THE MEANS OF THE CONSPIRACY

47. From August 1985 through November 1986, in order to conceal and cover up their activities, the conspirators, including the defendant JOHN M. POINDEXTER and Oliver L. North, deceived Congress and committees of Congress by making false, fictitious, fraudulent and misleading statements and representations, concerning, among other things, the involvement of officials of the United States, including members of the NSC staff, in support of the military and paramilitary operations in Nicaragua by the Contras at a time when the Boland Amendment was in effect.

48. From early November 1986 to November 21, 1986, to conceal and cover up their activities, the defendant JOHN M. POINDEXTER made false and misleading statements to Congress and committees of Congress with respect to the government-sponsored Iran initiative and the sale of arms to elements in Iran, and certain of the conspirators caused to be drafted, in anticipation of appearances before committees of Congress by the defendant POINDEXTER and William J. Casey, the Director of the CIA, a false and misleading chronology with respect to the United States initiative to Iran and the sale of arms to elements in Iran.

49. In November 1986, to conceal and cover up the conspirators' activities, the defendant JOHN M. POINDEXTER and Oliver L. North altered, destroyed, removed and caused to be altered, destroyed and removed official and other documents and

records and copies of official and other documents and records, including classified documents and records of the NSC and the staff of the NSC.

OVERT ACTS

50. The following overt acts, among others, were knowingly committed and caused to be committed, in the District of Columbia and elsewhere, by the defendant JOHN M. POINDEXTER, Oliver L. North, Richard V. Secord and Albert Hakim and their co-conspirators in furtherance of the conspiracy and to effect the objects thereof:

(1) On August 31, 1985, the defendant JOHN M. POINDEXTER sent a message to Oliver L. North on one of the NSC computer systems which allowed North thereafter to utilize that computer system to communicate directly with the defendant POINDEXTER without going through the NSC's Executive Secretary.

(2) On September 5, 1985, in Washington, D.C., Oliver L. North caused certain misrepresentations to be made in a letter sent to the Chairman of the House of Representatives Permanent Select Committee on Intelligence.

(3) On September 12, 1985, in Washington, D.C., Oliver L. North caused certain misrepresentations to be made in a letter sent to the Chairman of the House of Representatives Committee on Foreign Affairs Subcommittee on Western Hemisphere Affairs.

(4) On September 20, 1985, Oliver L. North sent a letter to Felix Rodriguez, a/k/a "Max Gomez," in Miami, Florida.

(5) On October 7, 1985, in Washington, D.C., Oliver L. North caused certain misrepresentations to be made in an enclosure to a letter sent to the Chairman of the House of Representatives Permanent Select Committee on Intelligence.

(6) On July 21, 1986, in Washington, D.C., the defendant JOHN M. POINDEXTER caused letters to be sent to the Chairmen of the House of Representatives Committees on Foreign Affairs and Armed Services and the House of Representatives Permanent Select Committee on Intelligence.

(7) On August 6, 1986, in Washington, D.C., Oliver L. North made representations to the House of Representatives Permanent Select Committee on Intelligence.

(8) On August 11, 1986, in Washington, D.C., the defendant JOHN M. POINDEXTER, having been advised of representations made by Oliver L. North in his August 6, 1986 meeting with the House of Representatives Permanent Select Committee on Intelligence, sent a message to North stating, "Well done."

(9) Between November 7, 1986 and November 20, 1986, in Washington, D.C., the defendant JOHN M. POINDEXTER and Oliver L. North participated in the preparation of a chronology of events relevant to the shipment of arms to Iran for use in

testimony and appearances by officials of the Executive Branch before congressional committees.

(10) On November 21, 1986, in Washington, D.C., the defendant JOHN M. POINDEXTER made representations to the House of Representatives Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence.

(11) In November 1986, in Washington, D.C., Oliver L. North removed, altered, destroyed and caused to be removed, altered and destroyed certain documents and other records of the NSC and its staff.

(12) Between November 22, 1986 and November 29, 1986, in Washington, D.C., the defendant JOHN M. POINDEXTER deleted from his file in the memory of one of the NSC computer systems all the stored messages contained in that system that had been sent or received by the defendant POINDEXTER.

(Violation of Title 18, United States Code, Section 371.)

COUNT TWO

(Obstruction of Congress by POINDEXTER
in July and August 1986)

The Grand Jury further charges:

1. Paragraphs 1 through 11 of Count One of this Indictment are repeated, realleged and incorporated by reference herein as if fully set forth at length.

2. On June 24, 1986, a resolution of inquiry, H. Res. 485, was introduced in the House of Representatives which, if adopted, would have directed the President to provide the House of Representatives certain information concerning the activities of Oliver L. North or any other member of the NSC staff in support of the Contras, including a complete list and description of any contact or other communication between North or any other member of the NSC staff with any private individual or any representative of a foreign government concerning the provision of funding or other assistance to the Contras, any document concerning the provision of such funding or assistance, and a complete list and description of and any document concerning any contact or other communication, directly or through intermediaries, since July 28, 1983, between North or any other member of the NSC staff and any representative of the Contras, Robert W. Owen or John K. Singlaub. The resolution then was referred jointly to the House Committee on Foreign Affairs,

the House Committee on Armed Services and the House Permanent Select Committee on Intelligence ("HPSCI") for consideration.

3. On June 25 and July 1, 1986, the Chairmen of the House Committee on Foreign Affairs and HPSCI each wrote a letter, on behalf of his Committee, to the President attaching a copy of the proposed resolution of inquiry and requesting comments on the proposed resolution no later than July 22, 1986.

4. On July 21, 1986, the defendant JOHN M. POINDEXTER, on behalf of the President, wrote separate letters to the Chairmen of the House Committees on Foreign Affairs and Armed Services and HPSCI in which he expressed the Administration's strong opposition to the proposed resolution of inquiry.

5. The defendant JOHN M. POINDEXTER's letters to the Chairmen of the House Committee on Foreign Affairs and the Permanent Select Committee on Intelligence were identical in substance and stated as follows:

> This is in reply to your letter to the President on June 25, 1986, requesting comments on H. Res. 485, relating to the allegations of improper activities by members of the National Security Council staff in support of the Nicaraguan resistance. The Administration strongly opposes enactment of the resolution.
>
> Last fall, in an effort to cooperate with Chairman Barnes, my predecessor, Robert C. McFarlane, met with members of your committee and the Permanent Select Committee on Intelligence. While I did not participate in these discussions, I understand that information on the specific issues raised in H. Res. 485, was provided to your Committee and that

> this information made it clear that the actions of the National Security Council staff were in compliance with both the spirit and letter of the law regarding support of the Nicaraguan resistance.
>
> Thank you for the opportunity to comment on H. Res. 485. I have forwarded similar letters to Chairman Hamilton and Chairman Aspin and sincerely hope this matter can finally be put to rest.

6. The defendant JOHN M. POINDEXTER's letter to the Chairman of the House Committee on Armed Services attached copies of the other two letters and stated as follows:

> I am writing to oppose H. Res. 485, a resolution of inquiry concerning allegations of improper activities of members of the staff of the National Security Council in support of the Nicaraguan resistance.
>
> I understand the resolution has been referred jointly to your committee, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence.
>
> Attached for your information is a copy of the response provided to the Committee on Foreign Affairs which, along with the Intelligence Committee, requested comment.
>
> Considerable information provided by this office exists in both committees, which answered all questions in some detail. You may wish to review that information to satisfy yourself that actions by the National Security Council staff have been and continue to be within the spirit as well as the letter of the law.

7. The three letters were false, fictitious, fraudulent and misleading because in truth and in fact, as the

defendant POINDEXTER then and there well knew and believed, among other things, the 1985 letters and submissions were false and would not have been a truthful response to the 1986 inquiries.

8. In connection with the proposed resolution of inquiry, after the Chairman of HPSCI received the defendant JOHN M. POINDEXTER's letter, he requested, on behalf of the Committee, the opportunity to meet with and ask questions of Oliver L. North. On August 6, 1986, in accordance with arrangements made and approved by the defendant POINDEXTER, North met in the Situation Room of the White House with members and staff of HPSCI to answer questions concerning his activities with respect to the Contras and his contacts with Robert W. Owen and John K. Singlaub.

9. In the course of that meeting, Oliver L. North made certain false, fictitious, fraudulent, and misleading statements and representations intended to obstruct the Committee's inquiry as follows: that North had not given military advice to the Contras, had no knowledge of any specific military action conducted by the Contras, had not had contact with John K. Singlaub for the previous twenty months, had not raised funds in support of the Contras, had not advised or guided Robert W. Owen with respect to the Contras, and had only casual contact with Owen.

10. On August 11, 1986, after Oliver L. North's meeting with members and staff of HPSCI and after having been

advised of statements made by North in the course of the meeting, the defendant JOHN M. POINDEXTER sent a message to North which stated, "Well done," notwithstanding that as the defendant POINDEXTER then and there well knew and believed the statements and representations of North were false, fictitious, fraudulent and misleading.

11. From July 21, 1986 to August 6, 1986, in the District of Columbia, the defendant JOHN M. POINDEXTER unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry under which inquiries and investigations were being had by committees of Congress, to wit, the consideration of a proposed resolution of inquiry by HPSCI and the House of Representatives Committees on Foreign Affairs and Armed Services, by making and causing to be made false, fictitious, fraudulent and misleading statements and representations to those committees of Congress for the purpose of concealing and causing to be concealed material facts.

(Violation of Title 18, United States Code, Sections 1505 and 2.)

COUNT THREE

(Obstruction of Congress by POINDEXTER in November 1986)

The Grand Jury further charges:

1. Paragraphs 1 through 11 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. In early November 1986, reports appeared in the foreign and domestic press that the United States Government had participated in the shipment of arms to Iran.

3. Following those reports, committees of Congress, including the House of Representatives Permanent Select Committee on Intelligence ("HPSCI") and the Senate Select Committee on Intelligence ("SSCI"), requested that certain officials of the Executive Branch, including the defendant JOHN M. POINDEXTER and William J. Casey, the Director of Central Intelligence, appear before the committees concerning the participation of the United States Government in the shipment of arms to Iran.

4. During November 1986, in preparation for the appearances of the defendant JOHN M. POINDEXTER and the Director of Central Intelligence before HPSCI and SSCI, the defendant POINDEXTER participated in the preparation of a false and misleading chronology of events relating to United States Government knowledge of and involvement in the sale of arms to Iran, which, in its final version, falsely and misleadingly

stated that no official of the United States Government learned before January 1986 that Hawk missiles had been shipped to Iran in November 1985.

5. On November 21, 1986, in the White House Situation Room, the defendant JOHN M. POINDEXTER appeared before HPSCI and made false, fictitious, fraudulent and misleading statements and representations, as follows: that the defendant POINDEXTER did not learn until January 1986 that Hawk missiles had been shipped to Iran in November 1985 and that the defendant POINDEXTER had not learned until November 20, 1986 that anyone in the United States Government had prior knowledge of the shipment of Hawk missiles to Iran in November 1985.

6. On November 21, 1986, the defendant JOHN M. POINDEXTER appeared before the Chairman and Vice Chairman of SSCI, acting on behalf of the Committee, and made a false, fictitious, fraudulent and misleading statement and representation, as follows: that the defendant POINDEXTER had not learned until January 1986 that Hawk missiles had been shipped to Iran in November 1985.

7. The statements and representations made by the defendant JOHN M. POINDEXTER to HPSCI and SSCI were false, fictitious, fraudulent and misleading because in truth and in fact, as the defendant POINDEXTER then and there well knew and believed, among other things, the defendant POINDEXTER was advised by Oliver L. North, at least as early as November 20,

1985, in advance of the shipment of Hawk missiles to Iran, that such a shipment was about to take place and was further advised by North, in late November and December 1985, that a shipment of Hawk missiles had, indeed, been transported to Iran.

8. Between November 22, 1986 and November 29, 1986, the defendant JOHN M. POINDEXTER deleted from his file in the memory of one of the NSC computer systems all the stored messages contained in that system that had been sent or received by the defendant POINDEXTER.

9. From early November 1986 to November 24, 1986, in the District of Columbia, the defendant JOHN M. POINDEXTER unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry under which inquiries and investigations were being had by committees of Congress, to wit, HPSCI and SSCI, into the participation of the United States Government in the shipment of arms to Iran by participating in the preparation of a false and misleading chronology of events, making and causing to be made false, fictitious, fraudulent and misleading statements and representations to those committees of Congress, and deleting messages from the NSC computer system, all for the purpose of concealing and causing to be concealed material facts.

(Violation of Title 18, United States Code, Sections 1505 and 2.)

-30-

COUNT FOUR

(False Statements by POINDEXTER on November 21, 1986)

The Grand Jury further charges:

1. Paragraphs 1 through 11 of Count One and Paragraphs 2 and 3 of Count Three of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. On November 21, 1986, in the District of Columbia, the defendant JOHN M. POINDEXTER unlawfully, willfully and knowingly made and caused to be made material false, fictitious and fraudulent statements and representations to a department and agency of the United States, to wit, HPSCI, a committee of Congress, in a matter within its jurisdiction, to wit, intelligence aspects of United States Government participation in the sale of arms to Iran, as follows: that the defendant POINDEXTER did not learn until January 1986 that Hawk missiles had been shipped to Iran in November 1985 and that the defendant POINDEXTER had not learned until November 20, 1986 that anyone in the United States Government had prior knowledge of the shipment of Hawk missiles to Iran in November 1985.

3. Those statements and representations were false, fictitious and fraudulent because in truth and in fact, as the defendant JOHN M. POINDEXTER then and there well knew and believed, among other things, the defendant POINDEXTER was

advised by Oliver L. North, at least as early as November 20, 1985, in advance of the shipment of Hawk missiles to Iran, that such a shipment was about to take place and was further advised by North, in late November and December 1985, that a shipment of Hawk missiles had, indeed, been transported to Iran.

(Violation of Title 18, United States Code, Section 1001.)

COUNT FIVE

(False Statement by POINDEXTER on November 21, 1986)

The Grand Jury further charges:

1. Paragraphs 1 through 11 of Count One and Paragraphs 2 and 3 of Count Three of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. On November 21, 1986, in the District of Columbia, the defendant JOHN M. POINDEXTER unlawfully, willfully, and knowingly made and caused to be made a material false, fictitious and fraudulent statement and representation to a department and agency of the United States, to wit, the Senate Select Committee on Intelligence, a committee of Congress, in a matter within its jurisdiction, to wit, intelligence aspects of United States Government participation in the sale of arms to Iran, as follows: that the defendant POINDEXTER had not learned until January 1986 that Hawk missiles had been shipped to Iran in November 1985.

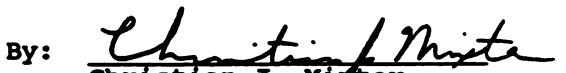
3. That statement and representation was false, fictitious and fraudulent because in truth and in fact, as the defendant POINDEXTER then and there well knew and believed, among other things, in November and December 1985 the defendant

POINDEXTER was advised by Oliver L. North that such a shipment was about to take place and was further advised by North that a shipment had, indeed, been transported to Iran.

(Violation of Title 18, United States Code, Section 1001.)

Respectfully submitted,

LAWRENCE E. WALSH
Independent Counsel

By: 
Christian J. Mixter
Associate Counsel

Office of Independent Counsel
555 Thirteenth Street, N.W.
Suite 701 West
Washington, D.C. 20004
(202) 383-8940

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true copy of the attached Indictment Conformed to the Court's August 28, 1989 Memorandum and Order. to be delivered by hand to Richard W. Beckler, Esq., Fulbright & Jaworski, 1150 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036, this 26th day of February, 1990.

Christian J. Mixter
Associate Counsel

RECEIVED
MAY - 1 1989

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

FILED
APR 24 1989
Clerk, U.S. District Court
Alexandria, Virginia

UNITED STATES OF AMERICA	)	CRIMINAL NO. CR89-00150-A
	)	
v.	)	VIOLATIONS:
	)	
JOSEPH F. FERNANDEZ	)	18 USC 1505
	)	Obstruction of
	)	Proceedings
	)	(Counts 1 and 3)
	)	
	)	18 USC 1001
	)	False Statements
	)	(Counts 2 and 4)

INDICTMENT

APRIL 1989 TERM - At Alexandria

OFFICE OF INDEPENDENT COUNSEL
89 MAY -1 P 5:12

COUNT ONE

THE GRAND JURY CHARGES THAT:

INTRODUCTION

1. At all times relevant to this Indictment, the Central Intelligence Agency ("CIA") was the principal United States Government agency responsible for the collection of foreign intelligence and the conduct of covert action and foreign intelligence operations.

2. At all times relevant to this Indictment, the defendant JOSEPH F. FERNANDEZ was an employee of the CIA, serving as the chief of station in Costa Rica. As the CIA chief of station, the defendant FERNANDEZ had immediate control over and responsibility for all CIA operations in Costa Rica. The defendant FERNANDEZ reported to and received

supervision from the Chief of the CIA's Central American Task Force, who was stationed at CIA headquarters in Langley, Virginia.

3. At all times relevant to this Indictment, the National Security Council ("NSC") was a government entity established by the National Security Act of 1947, whose statutory members were the President of the United States, the Vice President, the Secretary of State and the Secretary of Defense. At all times relevant to this Indictment, other officials were also members of the NSC by appointment of the President. The function of the NSC was to advise the President on the integration of domestic, foreign and military policies relating to the national security, to facilitate cooperation among the military services and other departments and agencies of the government in matters involving the national security, and to review, guide and direct foreign intelligence and covert action activities.

4. At all times relevant to this Indictment, the Contras, also known as the Nicaraguan democratic resistance, were military insurgents engaged in military and paramilitary operations in Nicaragua. In many instances, these operations occurred near the borders of Costa Rica and Honduras, Nicaragua's neighboring countries to the south and north, respectively.

5. From in or about December 1981 to on or about October 11, 1984, the United States Government, acting

principally through the CIA, pursuant to written presidential findings, provided the Contras with financial support, arms and military equipment, as well as supervision, instruction, tactical and other advice, coordination, intelligence and direction.

6. On October 12, 1984, Public Law 98-473 was enacted and expressly prohibited funds, including salaries, available to the CIA as well as certain other agencies and entities of the United States, from being obligated or expended in support of military or paramilitary operations in Nicaragua. This provision of law was commonly known as the Boland Amendment.

7. On August 12 and December 4, 1985, Congress adopted modifications to the Boland Amendment that authorized the provision of humanitarian aid to the Contras, including communications equipment and communication training, and allowed United States government employees to exchange information with the Contras, including "advice" on the "effective delivery and distribution of materiel." At all times between October 12, 1984 and October 17, 1986, however, the CIA was prohibited from spending funds (including funds for salaries and transportation) for activities that "amount[ed] to participation in the planning or execution of military or paramilitary operations in Nicaragua by the Nicaraguan democratic resistance, or to participation in logistics activities integral to such operations." As of

October 18, 1986, Congress again authorized the CIA to provide military aid to the Contras.

8. At no time during the period October 12, 1984 through October 17, 1986, was any member of the NSC staff authorized by a presidential finding to undertake any covert or special activities with respect to Nicaragua, including any of the covert or special activities previously undertaken by the CIA. At all times during this period, Oliver L. North was a member of the NSC staff.

9. On October 6, 1986, a plane carrying lethal supplies for delivery to the Contras was shot down over Nicaragua. The sole survivor of this incident was an American citizen named Eugene Hasenfus.

10. In early November 1986, reports appeared in the foreign and domestic press that the United States Government had participated in the shipment of arms to Iran.

11. On November 25, 1986, the Attorney General of the United States announced that proceeds from the arms transfers to Iran may have been diverted to assist the Contras.

12. In late November 1986, the CIA's Office of Inspector General began an investigation into possible unlawful and unauthorized CIA support for military and paramilitary operations in Nicaragua by the Contras.

13. On January 11, January 24 and February 2, 1987, the defendant JOSEPH F. FERNANDEZ met with an investigator working for the CIA's Office of Inspector General at CIA

Headquarters, Langley, Virginia, to answer questions with respect to that Office's inquiry.

14. From on or about January 11, 1987 to March 1, 1987, in Fairfax County, within the Eastern District of Virginia, the defendant JOSEPH F. FERNANDEZ unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper administration of the law under which a pending proceeding was being had before a department and agency of the United States, to wit, the conduct of an investigation by the CIA's Office of Inspector General into possible unlawful and unauthorized CIA support for military and paramilitary operations in Nicaragua by the Contras, by making false, fictitious, fraudulent and misleading statements and representations to an inspector of the CIA's Office of Inspector General, including false statements more fully set forth in Count Two of this Indictment, for the purpose of concealing and causing to be concealed material facts.

(Violation of Title 18, United States Code, Section 1505.)

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

15. Paragraphs 1 through 13 of Count One of this Indictment are repeated, realleged and incorporated by reference herein as if fully set forth in this Count.

16. On or about January 11, 1987, in Fairfax County, within the Eastern District of Virginia, the defendant JOSEPH F. FERNANDEZ unlawfully, willfully and knowingly did make and cause to be made material false, fictitious and fraudulent statements to a department and agency of the United States, to wit, the CIA's Office of Inspector General, in a matter within its jurisdiction, to wit, an investigation into possible unlawful and unauthorized CIA support for military and paramilitary operations in Nicaragua by the Contras, as follows: that a project to build an airstrip in northern Costa Rica in 1985 was an initiative of the Costa Rican government; that the airstrip was to be used for training activities by Costa Rican forces in preparation for a possible Nicaraguan invasion of Costa Rica; and that the defendant FERNANDEZ's only contacts with Rafael Quintero were on the occasions of resupply flights.

17. Those statements and representations were false, fictitious and fraudulent because in truth and in fact, as the defendant JOSEPH F. FERNANDEZ then and there well knew

and believed, among other things, the project to build an airstrip in northern Costa Rica was an initiative of the defendant FERNANDEZ and others; the airstrip was designed to facilitate the resupply of the Contras; and the defendant FERNANDEZ had numerous contacts with Rafael Quintero in connection with matters other than the resupply flights, including the construction of the airstrip in northern Costa Rica.

(Violation of Title 18, United States Code, Section 1001.)

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

18. Paragraphs 1 through 11 of Count One of this Indictment are repeated, realleged and incorporated by reference herein as if fully set forth in this Count.

19. On December 1, 1986, the President established a Special Review Board, also known as "the Tower Commission," to examine the proper role of the National Security Council staff in national security operations, including the arms transfers to Iran. Among its areas of inquiry, the Tower Commission was authorized to examine all of the circumstances surrounding the "Iran/Contra matter."

20. On January 21, 1987, the defendant JOSEPH F. FERNANDEZ met with investigators working for the Tower Commission at CIA Headquarters, Langley, Virginia, to answer questions with respect to the Tower Commission's inquiry. On January 28, 1987, the defendant FERNANDEZ testified before the Board of the Tower Commission.

21. From on or about January 21, 1987 to January 28, 1987, in Fairfax County, within the Eastern District of Virginia, the defendant JOSEPH F. FERNANDEZ unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper administration of the law under which a pending

proceeding was being had before a department and agency of the United States, to wit, the Tower Commission's conduct of a fact-finding inquiry on behalf of the President, by making false, fictitious, fraudulent and misleading statements and representations to representatives of the Tower Commission, including false statements more fully set forth in Count Four of this Indictment, for the purpose of concealing and causing to be concealed material facts.

(Violation of Title 18, United States Code, Section 1505.)

COUNT FOUR

THE GRAND JURY FURTHER CHARGES THAT:

22. Paragraphs 1 through 11 of Count One and paragraphs 19 and 20 of Count Three of this Indictment are repeated, realleged and incorporated by reference herein as if fully set forth in this Count.

23. On or about January 21, 1987, in Fairfax County, within the Eastern District of Virginia, the defendant JOSEPH F. FERNANDEZ unlawfully, willfully and knowingly did make and cause to be made material false, fictitious and fraudulent statements to a department and agency of the United States, to wit, the Tower Commission, in a matter within its jurisdiction, to wit, the examination of the role of the NSC staff in national security operations, as follows: that the defendant FERNANDEZ did not know for a fact that Oliver L. North had been involved in assisting the resupply of the Contras; and that the defendant FERNANDEZ did not know that the supplies the defendant FERNANDEZ assisted in delivering to the Contras in September 1986 contained weapons and ammunition.

24. Those statements and representations were false, fictitious and fraudulent because in truth and in fact, as the defendant JOSEPH F. FERNANDEZ then and there well knew and believed, among other things, Oliver L. North had been

involved in assisting the resupply of the Contras; and the supplies that the defendant FERNANDEZ helped deliver to the Contras in September 1986 contained weapons and ammunition.

(Violation of Title 18, United States Code, Section 1001.)

A TRUE BILL:

FOREMAN OF THE GRAND JURY

LAWRENCE E. WALSH
INDEPENDENT COUNSEL

A True Copy, Teste:
Doris R. Casey, Clerk
By Renée Watts Spivey
Deputy Clerk

FILED
FEB 22 1990
CLERK, U.S. DISTRICT COURT
DEPUTY

RECEIVED
FEB 22

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Holding a Criminal Term

Grand Jury Sworn in on December 5, 1989.

UNITED STATES OF AMERICA v. THOMAS G. CLINES, a/k/a "C. Tea", Defendant.	Criminal No. 90-0064 Grand Jury Original Violations: 26 U.S.C. § 7206(1) 31 U.S.C. §§ 5314 and 5322(b)

I N D I C T M E N T

COUNT ONE

The Grand Jury charges:

1. During 1985 and 1986, THOMAS G. CLINES along with his associates Richard V. Secord, a retired Major General in the Air Force, and Albert Hakim, a businessman, and others sold lethal military supplies to insurgents, commonly known as the Contras, engaged in military and paramilitary operations in Nicaragua. Beginning in late 1985 or early 1986, CLINES, Secord, Hakim, and others also participated in an initiative involving the sale of arms to elements in Iran.

2. During 1985 and 1986, CLINES received income based on a percentage of the profits generated from the arms sales to the Contras and to Iran.

3. On or about December 6, 1986, in the District of Maryland and elsewhere, the defendant THOMAS G. CLINES, a/k/a "C. Tea", who was in the calendar year 1985 married, unlawfully, wilfully, and knowingly made and subscribed a joint United States Individual Income Tax Return, form 1040, for the calendar year 1985 on behalf of himself and his wife, which contained and was verified by a written declaration that it was made under the penalties of perjury and which was filed with the Internal Revenue Service, and which he did not believe to be true and correct as to every material matter and which was not true and correct as to every material matter, to wit: (1) Schedule B, line 11, stating that the defendant did not have an interest in or a signature or other authority over a financial account in a foreign country; and (2) Schedule C, Part I, line 1a, reporting gross receipts or sales of $265,000; whereas, as the defendant well knew and believed, he did have an interest in or signature or other authority over a financial account in a foreign country, and his gross receipts or sales were in excess of the amount reported.

(Title 26, United States Code, Section 7206(1)).

COUNT TWO

The Grand Jury further charges:

1. Paragraphs 1 and 2 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. On or about October 16, 1987, in the District of Maryland and elsewhere, the defendant THOMAS G. CLINES, a/k/a "C. Tea", unlawfully, wilfully, and knowingly made and subscribed his United States Individual Income Tax Return, form 1040, for the calendar year 1986, which contained and was verified by a written declaration that it was made under the penalties of perjury and which was filed with the Internal Revenue Service, and which he did not believe to be true and correct as to every material matter and which was not true and correct to every material matter, to wit: (1) Schedule B, line 10, stating that the defendant did not have an interest in or a signature or other authority over a financial account in a foreign country; and (2) Schedule C, Part I, line 1a, reporting gross receipts or sales of $402,513; whereas as the defendant well knew and believed, he did have an interest in or signature or other authority over a financial account in a foreign country, and his gross receipts or sales were in excess of the amount reported.

(Title 26, United States Code, Section 7206(1)).

COUNT THREE

The Grand Jury further charges:

1. Paragraphs 1 and 2 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

2. That the defendant THOMAS G. CLINES, a/k/a "C. Tea", who during the calendar year 1985 had a financial interest in and signature and other authority over a financial account in a foreign country, which account during 1985 exceeded ten thousand dollars in aggregate value, unlawfully, wilfully, and knowingly, in the District of Maryland and elsewhere, failed to file a report of the same on or before June 30, 1986 as required by Title 31, United States Code, Section 5314 and by 31 C.F.R. Sections 103.24, 103.26, regulations adopted pursuant to Title 31, United States Code, Section 5314.

3. The defendant THOMAS G. CLINES, a/k/a "C. Tea", unlawfully, wilfully, and knowingly violated Title 31, United States Code, Section 5314 and 31 C.F.R. Sections 103.24, 103.26, regulations adopted pursuant to Title 31, United States Code, Section 5314, while violating another law of the United States, to wit, Title 26, United States Code, Section 7206(1), as set forth in Paragraph 3 of Count One of this Indictment.

(Title 31, United States Code, Sections 5314 and 5322(b)).

COUNT FOUR

The Grand Jury further charges:

1. Paragraphs 1 and 2 of Count One of this Indictment are repeated, realleged and incorporated herein as if fully set forth in this Count.

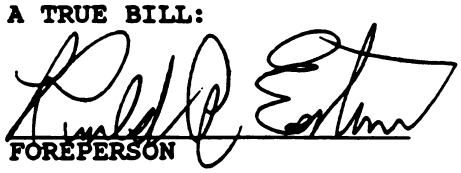
2. That the defendant THOMAS G. CLINES, a/k/a "C. Tea", who during the calendar year 1986 had a financial interest in and signature and other authority over a financial account in a foreign country, which account during 1986 exceeded ten thousand dollars in aggregate value, unlawfully, wilfully, and knowingly, in the District of Maryland and elsewhere, failed to file a report of the same on or before June 30, 1987 as required by Title 31, United States Code, Section 5314 and by 31 C.F.R. Sections 103.24, 103.26, regulations adopted pursuant to Title 31, United States Code, Section 5314.

3. The defendant THOMAS G. CLINES, a/k/a "C. Tea", unlawfully, wilfully, and knowingly violated Title 31, United States Code, Section 5314 and 31 C.F.R. Sections 103.24, 103.26, regulations adopted pursuant to Title 31, United States Code, Section 5314, while violating another law of the United States, to wit, Title 26, United States Code, Section 7206(1), as set

forth in Paragraph 3 of Count One of this Indictment and Paragraph 2 of Count Two of this Indictment.

(Title 31, United States Code, Sections 5314 and 5322(b)).

A TRUE BILL:



FOREPERSON



LAWRENCE E. WALSH
Independent Counsel

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	Criminal No.
v.	)	
	)	Violations:
ALAN D. FIERS, JR.,	)	2 U.S.C. § 192.
	)	
Defendant.	)	
	)	

INFORMATION

The Independent Counsel charges:

COUNT ONE

1. At all times relevant to this Information, the Central Intelligence Agency ("CIA") was the principal United States Government agency responsible for the collection of foreign intelligence and the conduct of covert foreign intelligence operations.

2. At all times relevant to this Information, the Nicaraguan democratic resistance, also known as the Contras, were insurgents engaged in military and paramilitary operations in Nicaragua.

3. From in or about December 1981 until on or about October 11, 1984, the United States Government, acting principally through the CIA, pursuant to written Presidential findings, provided the Contras with financial support, arms and military equipment, as well as supervision, instruction,

tactical and other advice, coordination, intelligence and direction.

4. On October 12, 1984, Public Law 98-473 was enacted and expressly prohibited funds available to the CIA, as well as certain other agencies and entities of the United States, from being obligated or expended in support of military or paramilitary operations in Nicaragua, stating in relevant part:

> During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

This provision of law was commonly known as the Boland Amendment.

5. On August 12, 1985, Congress modified the Boland Amendment by appropriating $27 million for humanitarian assistance to the Contras and permitting the United States Government to exchange information with the Contras. By executive order signed August 29, 1985, President Reagan created the Nicaraguan Humanitarian Assistance Office ("NHAO") in the United States Department of State for the purpose of administering humanitarian assistance to the Contras.

6. On December 4, 1985, Congress modified the restrictions on Contra aid for fiscal year 1986 to allow for the provision of communications equipment and communications training for the Contras and for the provision of intelligence or advice to the Contras, for limited purposes.

7. From on or about October 9, 1984, up to and including November 25, 1986, the defendant, ALAN D. FIERS, JR., was the Chief of the CIA's Central American Task Force.

8. The Central American Task Force was the headquarters element that managed CIA operations in Central America. This area of responsibility included the management of operations that could be executed lawfully by the CIA or its agents in support of the Contra insurgency.

9. Beginning with the overthrow of the Shah of Iran on or about January 16, 1979, and the seizure of the United States Embassy in Iran and its staff on November 4, 1979, relations between the United States Government and the Government of Iran were characterized by mutual hostility and tension. At all times relevant to this Information, the United States Government imposed an embargo on shipments of arms to Iran. In January 1984 the Secretary of State designated Iran a sponsor of international terrorism and, thereafter, the United States Government actively urged its allies not to permit the shipment of arms to Iran, in part because of its sponsorship of international terrorism and the continuation of the Iran-Iraq war.

10. At all times relevant to this Information until November 25, 1986, Oliver L. North was a Lieutenant Colonel in the United States Marine Corps detailed to the National Security Council staff, where he held the position of Deputy Director, Political-Military Affairs. Among other things, Lt. Col. North engaged in certain activities with respect to the Contras, counter-terrorism, and a United States initiative involving the sale of arms to elements in Iran and efforts to obtain the release of American citizens held hostage in Lebanon. On November 25, 1986, Lt. Col. North was discharged from the National Security Council staff.

11. From October 1984 and up to November 25, 1986, the defendant, ALAN D. FIERS, JR., worked closely with Lt. Col. North on issues relating to Central America and, in particular, on matters relating to Contra activity.

12. During 1986, large proceeds were generated as a result of a United States Government initiative involving sales of arms to elements in Iran and efforts to obtain the release of American citizens held hostage in Lebanon. Millions of dollars from the proceeds of those arms sales were secretly diverted for various purposes, including the purchase and delivery of military weapons and supplies for the Contras. This utilization of proceeds from these arms sales to assist the Contras became known as "the diversion."

13. On November 25, 1986, at a news conference held by President Reagan, Attorney General Edwin Meese III announced that an investigation had revealed that proceeds from arms transactions related to the Iran initiative were deposited in bank accounts under the control of the Contras.

14. On November 25, 1986, following the press conference, the defendant, ALAN D. FIERS, JR., and Assistant Secretary of State for Inter-American Affairs Elliott Abrams appeared before the United States Senate Select Committee on Intelligence to give the Committee a briefing on Nicaragua.

15. During the briefing, but prior to addressing specific questions about Nicaragua, Assistant Secretary of State Abrams and the defendant, ALAN D. FIERS, JR., were asked to comment on events of the day, meaning the President's press conference wherein the diversion of proceeds from Iranian arms sales to Contra support had been revealed.

16. On November 25, 1986, in the District of Columbia, the defendant, ALAN D. FIERS, JR., having been asked to provide information upon a matter of inquiry before the United States Senate Select Committee on Intelligence, unlawfully, willfully and knowingly did make default by refusing and failing to answer fully and completely when asked about his knowledge of the diversion, by stating:

> [MR. FIERS]: No, I don't have anything to add to it except to add the footnote that the Agency was in the same boat, and the first I knew of it was on CNN today,

and that that is the first that I know that the Agency knew of it at that point in time.

. . .

[SENATOR EAGLETON]: Back to you, Mr. Abrams. Are you speaking for the sum totality of the State Department or are you speaking just of your own personal knowledge? As to who knew what and when they knew it.

[MR. ABRAMS]: Well, I am speaking for the State Department. That is, that I think that I can say with some degree of confidence that the Secretary and others who would be expected to know if I knew, or maybe even if I didn't know, were not aware that money was going into this. I think it is -- you know, I haven't asked everybody individually, but I am pretty certain in saying that there was nobody in the Department of State who knew about this Iranian business.

[SENATOR EAGLETON]: All right. How about, Mr. Fiers, you said the Agency -- could you give the same all encompassing answer with respect to the Agency?

[MR. FIERS]: Yeah. Everyone that I have talked to in the Agency, and that goes -- over time, I am fairly confident didn't know that this was going on. I certainly know that people below me and immediately above me didn't.

17. In making the underscored statements and representations, the defendant, ALAN D. FIERS, JR., unlawfully withheld material information from the United States Senate Select Committee on Intelligence because the defendant, ALAN D. FIERS, JR., then and there well knew that (a) he had been told by Lt. Col. North in the summer of 1986 that proceeds from sales of arms to Iran by the United States

Government had been utilized to support the Contras, and (b) he, ALAN D. FIERS, JR., had conveyed this information personally to his two immediate superiors at the CIA, namely, Clair E. George, the Deputy Director for Operations, and the Chief of the Latin American Division, by late August of 1986.

(In violation of Title 2, U.S.C. § 192.)

COUNT TWO

The Independent Counsel further charges:

1. Paragraphs 1 through 11 of Count One are realleged and are incorporated herein.

2. On October 5, 1986, a C-123K cargo plane was shot down over Nicaragua carrying supplies, including arms, to Contras inside Nicaragua. Three crewmen, William H. Cooper, Wallace Blaine Sawyer, Jr. and a Nicaraguan male, were killed; Eugene Hasenfus, the sole survivor, was captured by the Nicaraguan military.

3. During a press conference in Managua, Nicaragua, on October 9, 1986, Mr. Hasenfus, then in Nicaraguan custody, stated that he had made ten trips to supply the Contras and had worked with Max Gomez and Ramon Medina, whom he alleged were CIA employees. Mr. Hasenfus stated that Gomez and Medina oversaw housing for the crews, transportation, refueling and flight plans.

4. On October 9, 1986, the United States Senate Committee on Foreign Relations requested a briefing from CIA officials on the circumstances surrounding the downed resupply plane. Also on October 9, 1986, the United States House of Representatives Permanent Select Committee on Intelligence requested a briefing on the downed aircraft and the lethal resupply operation of which it was a part.

5. On or about October 9, 1986, the defendant, ALAN D. FIERS, JR., met with the CIA Deputy Director for

Operations, Clair E. George, to discuss what information would be provided to Congressional committees investigating the circumstances surrounding the downed aircraft and the resupply operation of which it was a part.

6. During the course of the meeting, Mr. George informed the defendant, ALAN D. FIERS, JR., that certain facts would not be conveyed to the Congressional committees because they would lead to further Congressional inquiry that would "turn the spotlight" on the Administration and thus reveal the role of Lt. Col. North in the resupply effort.

7. On October 14, 1986, the defendant, ALAN D. FIERS, JR., accompanied Mr. George to a briefing before the United States House of Representatives Permanent Select Committee on Intelligence.

8. On October 14, 1986, in the District of Columbia, the defendant, ALAN D. FIERS, JR., having been asked to provide information upon a matter under inquiry before the United States House of Representatives Permanent Select Committee on Intelligence, unlawfully, willfully and knowingly did make default by refusing and failing to answer fully and completely when asked these questions:

> [MR. CHAIRMAN]: You don't know whose airplane that was?
>
> [MR. GEORGE]: I have no idea. I read -- except what I read in the paper.
>
> [MR. CHAIRMAN]: I understand, but you don't know?
>
> [MR. FIERS]: <u>No, we do not know</u>.

[MR. CHAIRMAN]: There are a number of planes that take off there to supply the Contras regularly. You don't know who they are?

[MR. FIERS]: We know what the planes are by type, we knew, for example, there were two C-123s and two C-7 cargoes. . . . We knew in some cases much less frequently that they were flying down the Pacific air corridors into southern Nicaragua for the purposes of resupply, but as to who was flying the flights and who was behind them we do not know.

[MR. CHAIRMAN]: And you still don't?

[MR. FIERS]: No.

9. In making the underscored statements and representations, the defendant, ALAN D. FIERS, JR., unlawfully withheld material information from the United States House of Representatives Permanent Select Committee on Intelligence because the defendant, ALAN D. FIERS, JR., then and there knew that Felix Rodriguez, alias "Max Gomez," and Lt. Col. North, among others, were coordinating and assisting Contra resupply flights.

(In violation of Title 2 U.S.C. § 192.)



LAWRENCE E. WALSH
Independent Counsel

Office of Independent Counsel
Suite 701 West
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 383-8940

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	Criminal No.
v.	)	
	)	Violations:
ALAN D. FIERS, JR.,	)	2 U.S.C. § 192.
	)	
Defendant.	)	
	)	

GOVERNMENT'S STATEMENT OF THE FACTUAL BASIS FOR THE GUILTY PLEA

COUNT ONE

From October 1984 through November 25, 1986, ALAN D. FIERS, JR., was the Chief of the Central Intelligence Agency's ("CIA") Central American Task Force, which managed CIA operations in Central America. MR. FIERS worked closely with Lt. Col. Oliver L. North on Central American issues and, in particular, on matters relating to the activity of the Nicaraguan resistance fighters, known as the Contras.

During the period from October 1984 until November 25, 1986, Lt. Col. North was detailed by the United States Marine Corps to the National Security Council ("NSC") staff, where, among other things, Lt. Col. North engaged in certain activities with respect to the Contras, counter-terrorism, and a United States initiative involving the sale of arms to elements in Iran.

Beginning with the overthrow of the Shah of Iran on or about January 16, 1979, and the seizure of the United States Embassy in Iran and its staff on November 4, 1979, relations between the United States Government and the Government of Iran were characterized by mutual hostility and tension. At all times relevant to this Information, the United States Government imposed an embargo on shipments of arms to Iran. In January 1984 the Secretary of State designated Iran a sponsor of international terrorism and, thereafter, the United States Government actively urged its allies not to permit the shipment of arms to Iran, in part because of its sponsorship of international terrorism and the continuation of the Iran-Iraq war.

Despite the embargo on arms shipments to Iran and the effort to urge United States allies not to permit Iranian arms shipments, a United States Government initiative involving sales of arms to elements in Iran and efforts to obtain the release of American citizens held hostage in Lebanon was undertaken in the latter part of 1985 and continued in 1986. Millions of dollars from the proceeds of arms sales to Iran were generated and secretly used for various purposes, including the purchase and delivery of military weapons and supplies for the Contras. The use of proceeds from these arms sales to assist the Contras became known as "the diversion."

During the early Spring of 1986, Lt. Col. North told ALAN D. FIERS, JR., that Israel was selling weapons to Iran and "kicking dollars into the Contras' pot."

Shortly after receiving this information from Lt. Col. North, ALAN D. FIERS, JR., told his superior, the Chief of the CIA's Latin American Division, of North's revelation. Shortly after this conversation, the Chief of the Latin American Division was routinely reassigned and the new Chief of the Latin American Division (hereinafter referred to as C/LAD #2) began his duties in the Spring of 1986.

By late Summer of 1986, Lt. Col. North told ALAN D. FIERS, JR., that the United States was selling arms to Iran and using proceeds from the sales to aid the Contras. MR. FIERS reported this information to his superior, C/LAD #2. C/LAD #2 instructed MR. FIERS to report this information immediately to Clair E. George, the CIA's Deputy Director for Operations.

Shortly thereafter, MR. FIERS informed Mr. George that Lt. Col. North had told him that the United States was selling arms to Iran and using proceeds from the sales to assist the Contras. Mr. George informed MR. FIERS that, "Now you [Fiers] are one of a handful of people who know this."

On November 25, 1986, President Reagan held a press conference and announced that on November 21, 1986, he had become concerned about whether his national security

apparatus had provided him with a complete factual record with respect to the implementation of his policy toward Iran. President Reagan stated that he had directed Attorney General Edwin Meese III to review the matter. President Reagan introduced Attorney General Meese and asked him to brief the media on his preliminary findings. Attorney General Meese described arms transactions to Iran involving the United States and stated that the preliminary inquiry revealed that proceeds from those arms transactions had been deposited in bank accounts under the control of the Contras.

Later that day, ALAN D. FIERS, JR., and Assistant Secretary of State for Inter-American Affairs Elliott Abrams appeared before the United States Senate Select Committee on Intelligence to give it a briefing on Nicaragua.

During the briefing, but prior to addressing specific questions on Nicaragua, Committee members asked about the revelation by Attorney General Meese regarding the diversion. Assistant Secretary of State Abrams and the defendant, ALAN D. FIERS, JR., were asked to comment on events of the day.

After Assistant Secretary of State Abrams explained his lack of knowledge of the diversion prior to the November 25, 1986 press conference, MR. FIERS expressed his purported lack of knowledge by stating:

> [MR. FIERS]: No, I don't have anything to add to it except to add the footnote that the Agency was in the same boat, and the first I knew of it was on CNN today,

and that that is the first that I know that the Agency knew of it at that point in time.

. . .

[SENATOR EAGLETON]: Back to you, Mr. Abrams. Are you speaking for the sum totality of the State Department or are you speaking just of your own personal knowledge? As to who knew what and when they knew it.

[MR. ABRAMS]: Well, I am speaking for the State Department. That is, that I think that I can say with some degree of confidence that the Secretary and others who would be expected to know if I knew, or maybe even if I didn't know, were not aware that money was going into this. I think it is -- you know, I haven't asked everybody individually, but I am pretty certain in saying that there was nobody in the Department of State who knew about this Iranian business.

[SENATOR EAGLETON]: All right. How about, Mr. Fiers, you said the Agency -- could you give the same all encompassing answer with respect to the Agency?

[MR. FIERS]: Yeah. Everyone that I have talked to in the Agency, and that goes -- over time, I am fairly confident didn't know that this was going on. I certainly know that people below me and immediately above me didn't.

COUNT TWO

ALAN D. FIERS, JR., was aware generally from November 1984 through November 25, 1986, that Lt. Col. North was actively involved in coordinating lethal assistance for the Contras. During this period, the United States Government, and specifically the CIA, was prohibited by the Boland Amendment from providing lethal assistance to the Contras. MR. FIERS coordinated the Central American Task Force's activities with Lt. Col. North's to facilitate North's efforts to provide Contra assistance. MR. FIERS endeavored, however, to keep the Task Force's activities within his understanding of the scope of the Boland Amendment.

MR. FIERS became aware by February 1986 that Lt. Col. North was involved specifically in coordinating flights carrying lethal supplies to the Contras from Ilopango air base in El Salvador. He learned this from Lt. Col. North and from his interactions with two individuals involved in the resupply operation: Richard Gadd and Felix Rodriguez.

MR. FIERS met Mr. Gadd in February 1986 at Charley's, a restaurant in McLean, Virginia. The meeting had been arranged by Richard Secord, at the suggestion of Lt. Col. North. At this meeting, Mr. Gadd described the C-7 airplanes that would be used by the operation to deliver supplies to the Contras. Mr. Gadd also told MR. FIERS that, in addition to his operations as a contractor of the

Department of State's Nicaraguan Humanitarian Assistance Office ("NHAO"), he had also arranged for aerial deliveries of lethal supplies for the Contras to Central America.

MR. FIERS had a confrontation with Mr. Rodriguez at Ilopango air base in February 1986. MR. FIERS had become aware of Mr. Rodriguez' involvement in NHAO operations from Lt. Col. North and from intelligence reports. The confrontation occurred because Mr. Rodriguez had authorized a resupply flight that would have compromised United States Government objectives in the region. Mr. Rodriguez informed MR. FIERS that Lt. Col. North had authorized the flight. MR. FIERS spoke to Lt. Col. North by telephone in Mr. Rodriguez' presence and told Lt. Col. North that the flight would have to be cancelled. Later in the call, Lt. Col. North spoke to Mr. Rodriguez in MR. FIERS' presence and told Mr. Rodriguez to cancel the flight.

MR. FIERS became aware during March and April 1986 that the planes managed by Mr. Gadd were carrying lethal supplies to the Contras. Mr. Fiers also was aware that in April 1986 a Southern Air Transport L-100 airplane used for NHAO deliveries had been used to drop lethal supplies to Contra forces operating in southern Nicaragua. Lt. Col. North had informed MR. FIERS of the potential for such a delivery before the L-100 drop took place.

On August 12, 1986, MR. FIERS attended a meeting in the office of Donald P. Gregg, national security advisor to

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Vice President Bush, in which Mr. Rodriguez' complaints about the lethal resupply operation were discussed. Several other United States Government officials attended the meeting, including Lt. Col. Robert L. Earl, a Marine officer detailed to the NSC staff under Lt. Col. North, and the United States Ambassador to El Salvador, Edwin G. Corr.

At this meeting, the resupply activity at Ilopango was discussed. Ambassador Corr said that Mr. Rodriguez had been instrumental in this activity because of his personal friendship with the commander of Ilopango air base. MR. FIERS stated that the CIA was not interested in using the resupply assets at Ilopango once the CIA was authorized to provide lethal assistance to the Contras. MR. FIERS told Lt. Col. Earl that Lt. Col. North should be informed promptly about this meeting.

On October 5, 1986, one of the resupply operation's planes was shot down over Nicaragua. The plane carried arms and ammunition. The only survivor of the crash was Eugene Hasenfus, an American citizen. MR. FIERS learned of the crash on October 6, 1986. After the downing, but before October 10, 1986, MR. FIERS had a secure telephone conversation with Lt. Col. North regarding the downed plane. MR. FIERS asked Lt. Col. North whether the downed aircraft was Lt. Col. North's. Lt. Col. North told MR. FIERS that the plane was part of his operation, and that the operation was being dismantled.

During a press conference in Managua, Nicaragua, on October 9, 1986, Mr. Hasenfus, then in Nicaraguan custody, stated that he had made ten trips to supply the Contras and had worked with Max Gomez and Ramon Medina, who he alleged were CIA employees. Mr. Hasenfus stated that Mr. Gomez and Mr. Medina oversaw housing for the crews, transportation, refueling and flight plans. That same day, the United States Senate Committee on Foreign Relations and the United States House of Representatives Permanent Select Committee on Intelligence requested briefings from CIA officials on the circumstances surrounding the downed plane.

On October 9, 1986, MR. FIERS and Mr. George met to discuss briefing the committees. MR. FIERS and Mr. George agreed that Mr. George would read an opening statement prepared by the Central American Task Force, and that MR. FIERS would answer more specific questions, if necessary. MR. FIERS told Mr. George that the CIA would have to acknowledge that Felix Rodriguez was the "Max Gomez" named by Mr. Hasenfus because MR. FIERS knew that to be a fact. MR. FIERS also told Mr. George that they should describe how the NHAO operation at Ilopango metamorphosed into the lethal resupply operation.

Mr. George informed MR. FIERS that neither topic would be discussed. Mr. George stated that the CIA was still gathering information about Mr. Rodriguez and that, therefore, the Agency did not know conclusively who

Mr. Rodriguez was. Mr. George also stated that he wanted to avoid giving the level of detail suggested by MR. FIERS about the genesis of the lethal resupply program. Mr. George told MR. FIERS that the information should not be disclosed because it would "put the spotlight" on the Administration and thus reveal Lt. Col. North's involvement in the operation. MR. FIERS acquiesced to Mr. George's plan and had a draft of Mr. George's opening statement revised to delete the information identified by Mr. George as troublesome.

On October 14, 1986, Mr. George and MR. FIERS, accompanied by Assistant Secretary of State Abrams, testified before the House Permanent Select Committee on Intelligence, during which the following exchange occurred on the matter of the downed plane:

> [MR. CHAIRMAN]: You don't know whose airplane that was?
>
> [MR. GEORGE]: I have no idea. I read -- except what I read in the paper.
>
> [MR. CHAIRMAN]: I understand, but you don't know?
>
> [MR. FIERS]: No, we do not know.
>
> [MR. CHAIRMAN]: There are a number of planes that take off there to supply the Contras regularly. You don't know who they are?
>
> [MR. FIERS]: We know what the planes are by type, we knew, for example, there were two C-123s and two C-7 cargoes. . . . We knew in some cases much less frequently that they were flying down the Pacific air corridors into southern Nicaragua for the purposes of resupply,

but as to who was flying the flights and who was behind them we do not know.

[MR. CHAIRMAN]: And you still don't?

[MR. FIERS]: No.

Respectfully submitted,

LAWRENCE E. WALSH
Independent Counsel

Craig A. Gillen
Vernon L. Francis
Michael D. Vhay
Associate Counsel

July 9, 1991

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on May 15, 1990

UNITED STATES OF AMERICA	Criminal No. 91- 0521
v.	
CLAIR E. GEORGE,	Grand Jury Original
Defendant.	Violations: Title 18 U.S.C. § 1503 (Obstruction of Justice) Title 18 U.S.C. § 1505 (Obstruction of Congress) Title 18 U.S.C. § 1001 (False Statements) Title 18 U.S.C. § 1621 (General Perjury) Title 18 U.S.C. § 1623 (Perjury Before Grand Jury)

FILED IN OPEN COURT
SEP 0 1991
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

I N D I C T M E N T

017211

COUNT ONE

INTRODUCTION

1. At all times relevant to this Indictment, the Central Intelligence Agency ("CIA") was the principal United States Government agency responsible for the collection of foreign intelligence and the conduct of covert and foreign intelligence operations. From July 1984 through December 1987, the defendant, CLAIR E. GEORGE, was the Deputy Director for Operations at the CIA. As Deputy Director for Operations, the defendant, CLAIR E. GEORGE, supervised the worldwide intelligence activities of the CIA in the areas of covert action, intelligence collection and counter-intelligence.

Central America

2. At all times relevant to this Indictment, the Nicaraguan democratic resistance, also known as the Contras, were insurgents engaged in military and paramilitary operations in Nicaragua.

3. From in or about December 1981 until on or about October 11, 1984, the United States Government, acting principally through the CIA, pursuant to written Presidential findings, provided the Contras with financial support, arms and military equipment, as well as supervision and instruction, tactical and other advice, coordination, intelligence and direction.

4. On October 12, 1984, Public Law 98-473 was enacted and expressly prohibited funds available to the CIA, as well as to certain other agencies and entities of the United States, from being obligated or expended in support of military or paramilitary operations in Nicaragua, stating in relevant part:

> During fiscal year 1985 no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

This provision of law was commonly known as the "Boland Amendment." Subject to certain modifications discussed hereafter, the Boland Amendment remained in effect until October 1986.

5. After enactment of the Boland Amendment and continuing into 1986, certain private individuals, including American citizens, provided financial support and supplied arms, military equipment and logistical support to the Contras. Within the CIA, these individuals became known as the "private benefactors."

6. On August 12, 1985, Congress modified the Boland Amendment by approving $27 million for humanitarian assistance to the Contras.

7. By an executive order signed August 29, 1985, President Reagan created the Nicaraguan Humanitarian Assistance Office ("NHAO") in the United States Department of State for the purpose of administering the appropriated $27 million for humanitarian assistance to the Contras.

8. At all times relevant to this Indictment until November 25, 1986, Oliver L. North was a Lieutenant Colonel in the United States Marine Corps detailed to the National Security Council ("NSC") staff, where he held the position of Deputy Director, Political-Military Affairs. Among other things, Lt. Col. North helped coordinate the activities of private benefactors in supplying weapons and other lethal equipment to the Contras. Between November 1984 and November 1986, Lt. Col. North was actively engaged in raising funds for and providing arms and materiel to the Contras. Lt. Col. North worked with retired Air Force Maj. Gen. Richard V. Secord, among others, in providing assistance to the Contras.

9. From November 1984 until November 1986, Lt. Col. North had direct contact on a number of occasions with the defendant, CLAIR E. GEORGE, on Contra-related issues.

10. In early 1986, NHAO used the Ilopango air base in El Salvador for transshipment of humanitarian supplies to the Contras.

11. In late 1985 and early 1986, Lt. Col. North used persons and facilities associated with NHAO operations

11. In late 1985 and early 1986, Lt. Col. North used persons and facilities associated with NHAO operations at Ilopango air base in El Salvador to assist in the deliveries of lethal equipment to the Contras by private benefactors.

12. Felix Rodriguez, using the alias Max Gomez, began assisting and coordinating Contra resupply flights from Ilopango air base in El Salvador in early 1986. Felix Rodriguez had been recruited by Lt. Col. North in the Fall of 1985 to assist that portion of the Contra resupply effort which was to be based at Ilopango air base. When NHAO used Ilopango air base in January and February 1986, Felix Rodriguez helped coordinate the delivery of humanitarian supplies to the Contras. Additionally, Mr. Rodriguez assisted the private effort based out of Ilopango to deliver lethal and non-lethal materiel to the Contras.

13. During 1986, President Reagan requested that the United States Congress appropriate $100 million for support to the Contras. As of October 14, 1986, the United States Congress had not completed the enactment of this legislation.

14. From on or about October 9, 1984, through 1987, Alan D. Fiers, Jr., was the Chief of the Central American Task Force in the CIA.

15. The Central American Task Force was the headquarters element that managed CIA operations in Central America.

16. Although the Central American Task Force was a component of the Latin American Division of the CIA, Alan D. Fiers, Jr., as Chief of the Central American Task Force, had direct access to William J. Casey, Director of Central Intelligence, and to the defendant, CLAIR E. GEORGE, Deputy Director for Operations of the CIA, on important matters regarding Central America, particularly Contra-related issues.

The Shoot-Down

17. On October 5, 1986, while Congressional authorization for $100 million in Contra aid awaited final action, a C-123K aircraft was shot down over Nicaragua carrying supplies, including arms, to the Contras inside Nicaragua. Three crewmen, William H. Cooper, Wallace Sawyer, Jr., and a Latin male, were killed; Eugene Hasenfus, the sole survivor, was captured by the Nicaraguans.

18. During a press conference in Managua, Nicaragua, on October 9, 1986, Eugene Hasenfus, then in Nicaraguan custody, stated that he had made ten trips to supply the Contras and had worked with Max Gomez and Ramon Medina, whom he alleged were CIA employees. Mr. Hasenfus stated that Gomez and Medina oversaw housing for the crews, transportation, refueling and flight plans.

19. On October 10, 1986, in an article entitled "Fliers' Network Shares Old CIA Links," the Washington Post reported that unnamed sources speculated that the flight of the C-123K aircraft shot down in Nicaragua on October 5, 1986, might have been financed by Saudi Arabian officials, possibly through retired Maj. Gen. Richard V. Secord.

Congressional Inquiries

20. On October 9, 1986, the United States Senate Committee on Foreign Relations requested a briefing from CIA officials on the circumstances surrounding the downed resupply plane. Also on October 9, 1986, the United States House of Representatives Permanent Select Committee on Intelligence requested a briefing on the downed aircraft and the lethal resupply operation of which it was a part.

21. During the morning of October 9, 1986, the defendant, CLAIR E. GEORGE, instructed Alan D. Fiers, Jr., to prepare an opening statement to be read the following day at the briefing of the United States Senate Committee on Foreign Relations. Mr. Fiers drafted an opening statement that contained a paragraph describing the use of the Ilopango air base in El Salvador by NHAO in early 1986 to facilitate the delivery of the humanitarian supplies to the Contras.

22. Later on October 9, 1986, Alan D. Fiers, Jr., met with the defendant, CLAIR E. GEORGE, to discuss what information was to be provided to the Congressional committees investigating the circumstances surrounding the

downed aircraft and the resupply operation of which it was a part.

23. During the course of the meeting, the defendant, CLAIR E. GEORGE, told Alan D. Fiers, Jr., that certain facts were not to be conveyed to the Congressional committees because they would lead to further Congressional inquiry that would "turn the spotlight" on the Administration and thus reveal the role of Lt. Col. North in the Contra resupply effort.

24. The defendant, CLAIR E. GEORGE, directed Alan D. Fiers, Jr., to remove the portion of the draft opening statement regarding NHAO's use of the Ilopango air base for Contra resupply.

25. Prior to the United States Senate Committee on Foreign Relations briefing on October 10, 1986, Alan D. Fiers, Jr., told the defendant, CLAIR E. GEORGE, that they must admit at the briefing that "Max Gomez" was an alias for Felix Rodriguez because Mr. Fiers knew that for a fact.

26. The defendant, CLAIR E. GEORGE, told Alan D. Fiers, Jr., that the response to any question regarding Max Gomez' true identity would be that the CIA was still checking into the matter.

THE GRAND JURY CHARGES:

27. From on or about October 9, 1986, up to and including October 10, 1986, in the District of Columbia, the defendant, CLAIR E. GEORGE, acting unlawfully, willfully and

knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry of the United States Senate Committee on Foreign Relations, which was investigating the circumstances surrounding the shoot-down of a C-123K aircraft in Nicaragua on October 5, 1986, in that, during the aforesaid time period, the defendant, CLAIR E. GEORGE, did impede and endeavor to impede the investigation of the United States Senate Committee on Foreign Relations in the following manner:

A. He directed Alan D. Fiers, Jr., to remove a portion of the proposed opening statement to the United States Senate Committee on Foreign Relations, which explained the use of Ilopango air base in El Salvador by NHAO and helped show the evolution of the NHAO resupply operation into the private resupply effort at Ilopango, which was responsible for the C-123K flight on October 5, 1986;

B. He directed Alan D. Fiers, Jr., not to convey the facts discussed in subparagraph (A) above and known to Alan D. Fiers, Jr., to the United States Senate Committee on Foreign Relations; and

C. He told Alan D. Fiers, Jr., not to disclose his, Alan D. Fiers, Jr.'s, knowledge that "Max Gomez" was an alias for Felix Rodriguez, and instead directed Alan D. Fiers, Jr., to answer any question regarding Max Gomez's true identity with the response that the CIA was still checking into the matter;

all for the purpose of obstructing and impeding and endeavoring to obstruct and impede the investigation of the United States Senate Committee on Foreign Relations by preventing it from obtaining complete, truthful and relevant evidence.

(In violation of Title 18, U.S.C. § 1505).

COUNT TWO

THE GRAND JURY CHARGES:

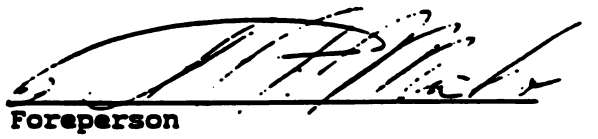
1. Paragraphs 1 through 27 of Count One are re-alleged and incorporated by reference herein.

2. From on or about October 9, 1986, up to and including October 14, 1986, in the District of Columbia, the defendant, CLAIR E. GEORGE, acting unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry under which the United States House of Representatives Permanent Select Committee on Intelligence was investigating the circumstances surrounding the October 5, 1986, shoot-down of the C-123K aircraft in Nicaragua, in that, from on or about October 9, 1986, up to and including October 14, 1986, the defendant, CLAIR E. GEORGE, did impede and endeavor to impede the United States House of Representatives Permanent Select Committee on Intelligence from learning the facts known to the CIA concerning the identities of individuals involved in and behind the resupply flights to the Contras by, among other things, instructing Alan D. Fiers, Jr., not to convey certain facts regarding NHAO's use of the Ilopango air base for Contra resupply, for the purpose of obstructing and impeding and endeavoring to obstruct and impede the investigation of the United States House of Representatives Permanent Select

Committee on Intelligence by preventing it from obtaining complete, truthful and relevant evidence.

(In violation of Title 18, U.S.C. § 1505).

A TRUE BILL:



Foreperson



Lawrence E. Walsh
Independent Counsel

5.3.92

Date

FILED

OCT 22 1992

Clerk, U.S. District Court
District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
v.) Crim. No. 91-0521 (RCL)
)
CLAIR E. GEORGE,) +92-215
Defendant.)
)

ORDER #45

The court having granted the motion to dismiss both counts of Criminal No. 92-215, that case shall be closed by the Clerk.

The attached re-numbered indictment shall be used at the re-trial of this case.

SO ORDERED.

Royce C. Lamberth
Royce C. Lamberth
United States District Judge

DATE: OCT 22 1992

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OFFICE OF
INDEPENDENT COUNSEL

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on May 15, 1990

UNITED STATES OF AMERICA	:	Criminal No. 91-521
	:	
v.	:	
	:	Grand Jury Original
CLAIR E. GEORGE,	:	
	:	
Defendant.	:	
	:	Violations:
	:	Title 18 U.S.C. § 1503
	:	(Obstruction of Justice)
	:	Title 18 U.S.C. § 1001
	:	(False Statements)
	:	Title 18 U.S.C. § 1621
	:	(General Perjury)
	:	Title 18 U.S.C. § 1623
	:	(Perjury Before Grand Jury)

I N D I C T M E N T

COUNT ONE

INTRODUCTION

1. At all times relevant to this Indictment, the Central Intelligence Agency ("CIA") was the principal United States Government agency responsible for the collection of foreign intelligence and the conduct of covert and foreign intelligence operations. From July 1984 through December 1987, the defendant, CLAIR E. GEORGE, was the Deputy Director for Operations at the CIA. As Deputy Director for Operations, the defendant, CLAIR E. GEORGE, supervised the worldwide intelligence activities of the CIA in the areas of covert action, intelligence collection and counter-intelligence.

Central America

2. At all times relevant to this Indictment, the Nicaraguan democratic resistance, also known as the Contras, were insurgents engaged in military and paramilitary operations in Nicaragua.

3. From in or about December 1981 until on or about October 11, 1984, the United States Government, acting principally through the CIA, pursuant to written Presidential findings, provided the Contras with financial support, arms and military equipment, as well as supervision and instruction, tactical and other advice, coordination, intelligence and direction.

4. On October 12, 1984, Public Law 98-473 was enacted and expressly prohibited funds available to the CIA, as well as to certain other agencies and entities of the United States, from being obligated or expended in support of military or paramilitary operations in Nicaragua, stating in relevant part:

> During fiscal year 1985 no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

This provision of law was commonly known as the "Boland Amendment." Subject to certain modifications discussed hereafter, the Boland Amendment remained in effect until October 1986.

5. After enactment of the Boland Amendment and continuing into 1986, certain private individuals, including American citizens, provided financial support and supplied arms, military equipment and logistical support to the Contras. Within the CIA, these individuals became known as the "private benefactors."

6. On August 12, 1985, Congress modified the Boland Amendment by approving $27 million for humanitarian assistance to the Contras.

7. By an executive order signed August 29, 1985, President Reagan created the Nicaraguan Humanitarian Assistance Office ("NHAO") in the United States Department of State for the purpose of administering the appropriated $27 million for humanitarian assistance to the Contras.

8. At all times relevant to this Indictment until November 25, 1986, Oliver L. North was a Lieutenant Colonel in the United States Marine Corps detailed to the National Security Council ("NSC") staff, where he held the position of Deputy Director, Political-Military Affairs. Among other things, Lt. Col. North helped coordinate the activities of private benefactors in supplying weapons and other lethal equipment to the Contras. Between November 1984 and November 1986, Lt. Col. North was actively engaged in raising funds for and providing arms and materiel to the Contras. Lt. Col. North worked with retired Air Force Maj. Gen. Richard V. Secord, among others, in providing assistance to the Contras.

9. From November 1984 until November 1986, Lt. Col. North had direct contact on a number of occasions with the defendant, CLAIR E. GEORGE, on Contra-related issues.

10. In early 1986, NHAO used the Ilopango air base in El Salvador for transshipment of humanitarian supplies to the Contras.

11. In late 1985 and early 1986, Lt. Col. North used persons and facilities associated with NHAO operations

at Ilopango air base in El Salvador to assist in the deliveries of lethal equipment to the Contras by private benefactors.

12. Felix Rodriguez, using the alias Max Gomez, began assisting and coordinating Contra resupply flights from Ilopango air base in El Salvador in early 1986. Felix Rodriguez had been recruited by Lt. Col. North in the Fall of 1985 to assist the portion of the Contra resupply effort to be based at Ilopango air base. When NHAO used Ilopango air base in January and February 1986, Felix Rodriguez helped coordinate the delivery of humanitarian supplies to the Contras. Additionally, Mr. Rodriguez assisted the private effort based out of Ilopango to deliver lethal and non-lethal materiel to the Contras.

13. During 1986, President Reagan requested that the United States Congress appropriate $100 million for support to the Contras. As of October 14, 1986, the United States Congress had not completed the enactment of this legislation.

14. From on or about October 9, 1984, through 1987, Alan D. Fiers, Jr., was the Chief of the Central American Task Force in the CIA.

15. The Central American Task Force was the headquarters element that managed CIA operations in Central America.

16. Although the Central American Task Force was a component of the Latin American Division of the CIA, Alan D. Fiers, Jr., as Chief of the Central American Task Force, had direct access to William J. Casey, Director of Central Intelligence, and to the defendant, CLAIR E. GEORGE, Deputy Director for Operations of the CIA, on important matters regarding Central America, particularly Contra-related issues.

Iran

17. Beginning with the overthrow of the Shah of Iran on or about January 16, 1979, and the seizure of the United States Embassy in Iran and its staff on November 4, 1979, relations between the United States Government and the Government of Iran were characterized by mutual hostility and tension. At all times relevant to this Indictment, the United States Government imposed an embargo on shipments of arms to Iran. In January 1984, the Secretary of State designated Iran as a sponsor of international terrorism and, thereafter, the United States Government actively urged its allies not to permit the shipment of arms to Iran, in part because of its sponsorship of international terrorism and the continuation of the Iran-Iraq war.

18. In 1985 President Reagan secretly authorized Israel to transfer United States-supplied weapons to Iran to facilitate the release of American citizens held hostage in

Lebanon. On January 17, 1986, President Reagan signed a finding authorizing further arms sales to Iran.

19. On January 20, 1986, the defendant, CLAIR E. GEORGE, attended a meeting in the Situation Room of the White House. The purpose of the meeting was to prepare to implement the January 17, 1986, finding, which directed the CIA in part

> to facilitate efforts by third parties and third countries to establish contact with moderate elements within and outside the Government of Iran by providing these elements with arms, equipment and related materiel in order to enhance the credibility of these elements in their effort to achieve a more pro-U.S. government in Iran

The goal of these efforts was, among other things, to obtain the release of American citizens held hostage in Lebanon. These activities formed part of what became known as the "Iran initiative." The January 17, 1986, finding instructed the Director of Central Intelligence "to refrain from reporting this Finding to the Congress as provided in Section 501 of the National Security Act of 1947, as amended, until I [President Reagan] otherwise direct."

20. In addition to the defendant, CLAIR E. GEORGE, the meeting was attended by the Assistant to the President for National Security Affairs, Vice Admiral John M. Poindexter; Lt. Col. North; the Deputy Chief of the CIA's Near East Division, Thomas A. Twetten; the General Counsel

for the CIA, Stanley Sporkin; and retired Maj. Gen. Richard V. Secord.

21. During the January 20, 1986, meeting, retired Maj. Gen. Secord was introduced to the defendant, CLAIR E. GEORGE, as a consultant to the NSC. At the meeting, the defendant, CLAIR E. GEORGE, designated Thomas A. Twetten as the CIA operations officer who would respond to the NSC's day-to-day requirements for the "Iran initiative," and Admiral Poindexter designated Lt. Col. North as the NSC operations officer for the "Iran initiative."

22. Shortly after learning that retired Maj. Gen. Secord was participating in the "Iran initiative," the defendant, CLAIR E. GEORGE, spoke separately with Admiral Poindexter and Director of Central Intelligence William J. Casey. The defendant, CLAIR E. GEORGE, told Admiral Poindexter and Director Casey about concerns stemming from allegations that retired Maj. Gen. Secord had been associated with Edwin Wilson, a former CIA employee who had been convicted of several federal felonies.

23. On or about January 25, 1986, Lt. Col. North delivered to the CIA a document entitled "Notional Timeline for Operation Recovery" ("Timeline"). The Timeline indicated that a person named "Copp" (1) would assist the CIA in the packing and shipment of 4,508 TOW missiles from the United States to Iran; (2) possessed an account through which funds payable to the CIA for the purchase and transport of these

missiles would pass, and to which the CIA could bill its expenses for the transportation of these missiles; and (3) would travel to Israel to survey a point at which a "Copp a/c [aircraft]" would transfer missiles to an "Israeli 'sterile' a/c piloted by Copp crew" prior to the missiles' arrival in Iran. The defendant, CLAIR E. GEORGE, was aware that the name "Copp," as used in the Timeline, was an alias for retired Maj. Gen. Secord.

24. On or about January 25, 1986, the defendant, CLAIR E. GEORGE, was given a copy of the Timeline, which the defendant, CLAIR E. GEORGE, kept in a safe located in his office at the CIA. Because of the extreme sensitivity of the "Timeline," the copy that the defendant, CLAIR E. GEORGE, kept in his safe was the only official CIA copy of the document.

25. On or about January 25, 1986, Thomas A. Twetten met with the defendant, CLAIR E. GEORGE, and discussed the contents of the Timeline.

26. During 1986, pursuant to the "Iran initiative," HAWK missile spare parts and approximately 1,500 TOW missiles were caused to be delivered to Iran by the United States Government through the CIA and retired Maj. Gen. Secord.

27. The United States Congress was not notified of the "Iran initiative" until November 1986.

The Shoot-Down

28. On October 5, 1986, while Congressional authorization for $100 million Contra aid awaited final action, a C-123K aircraft was shot down over Nicaragua carrying supplies, including arms, to the Contras inside Nicaragua. Three crewmen, William H. Cooper, Wallace Sawyer, Jr., and a Latin male, were killed; Eugene Hasenfus, the sole survivor, was captured by the Nicaraguans.

29. During a press conference in Managua, Nicaragua, on October 9, 1986, Eugene Hasenfus, then in Nicaraguan custody, stated that he had made ten trips to supply the Contras and had worked with Max Gomez and Ramon Medina, whom he alleged were CIA employees. Mr. Hasenfus stated that Gomez and Medina oversaw housing for the crews, transportation, refueling and flight plans.

30. On October 10, 1986, in an article entitled "Fliers' Network Shares Old CIA Links," the Washington Post reported that unnamed sources speculated that the flight of the C-123K aircraft shot down in Nicaragua on October 5, 1986, might have been financed by Saudi Arabian officials, possibly through retired Maj. Gen. Richard V. Secord.

Congressional Inquiries

31. On October 9, 1986, the United States Senate Committee on Foreign Relations requested a briefing from CIA officials on the circumstances surrounding the downed resupply plane. Also on October 9, 1986, the United States

House of Representatives Permanent Select Committee on Intelligence requested a briefing on the downed aircraft and the lethal resupply operation of which it was a part.

32. During the morning of October 9, 1986, the defendant, CLAIR E. GEORGE, instructed Alan D. Fiers, Jr., to prepare an opening statement to be read the following day at the briefing of the United States Senate Committee on Foreign Relations. Mr. Fiers drafted an opening statement that contained a paragraph describing the use of the Ilopango air base in El Salvador by NHAO in early 1986 to facilitate the delivery of the humanitarian supplies to the Contras.

33. Later on October 9, 1986, Alan D. Fiers, Jr., met with the defendant, CLAIR E. GEORGE, to discuss what information was to be provided to the Congressional committees investigating the circumstances surrounding the downed aircraft and the resupply operation of which it was a part.

34. During the course of the meeting, the defendant, CLAIR E. GEORGE, told Alan D. Fiers, Jr., that certain facts were not to be conveyed to the Congressional committees because they would lead to further Congressional inquiry that would "turn the spotlight" on the Administration and thus reveal the role of Lt. Col. North in the Contra resupply effort.

35. The defendant, CLAIR E. GEORGE, directed Alan D. Fiers, Jr., to remove the portion of the draft

opening statement regarding NHAO's use of the Ilopango air base for Contra resupply.

36. Prior to the United States Senate Committee on Foreign Relations briefing on October 10, 1986, Alan D. Fiers, Jr., told the defendant, CLAIR E. GEORGE, that they must admit at the briefing that "Max Gomez" was an alias for Felix Rodriguez because Mr. Fiers knew that for a fact.

37. The defendant, CLAIR E. GEORGE, told Alan D. Fiers, Jr., that the response to any question regarding Max Gomez' true identity would be that the CIA was still checking into the matter.

THE GRAND JURY CHARGES:

38. On or about October 10, 1986, in the District of Columbia, the defendant, CLAIR E. GEORGE, unlawfully, knowingly and willfully made a material false, fictitious and fraudulent statement to a department or agency of the United States, to wit, the United States Senate Committee on Foreign Relations, in a matter within its jurisdiction, to wit, the Committee's investigation of the circumstances surrounding the October 5, 1986, shoot-down of a C-123K aircraft in Nicaragua.

39. It was material to the investigation of the United States Senate Committee on Foreign Relations to determine the nature and extent of the information the CIA possessed regarding the identity of American citizens involved in the private resupply effort of the Contras.

40. On October 10, 1986, the defendant, CLAIR E. GEORGE, appearing as a witness before the United States Senate Committee on Foreign Relations, made the following statements, knowing the underscored material statements to be false:

> [MR. GEORGE]: . . . We learned that support flights had American citizens involved.
>
> [SENATOR KERRY]: When was this?
>
> [MR. GEORGE]: Oh, I would say probably around March of this year, Senator. However, we were not aware of their identities.
>
> . . .
>
> However, to reiterate my opening remarks, we did not directly or indirectly assist them. We provided a great deal of intelligence about supplies into Nicaragua, and I believe that those of you who followed the "National Intelligence Daily" over the last two or three months will have noted that we have provided several articles about the growing amount of supplies being provided overland and by air to the Contras inside Nicaragua. I would only conclude in saying that at no time did we attempt to investigate those Americans. That is not our responsibility. On those occasions in the past, where we have come across Americans who we have determined were violating law, we have made that information available to the Department of Justice. We do not know the individuals involved in this affair which led to the downing of the airplane, and we do not know the details of supply routes which they used. Thank you, Mr. Chairman.

41. The above underscored material statements made before the duly authorized United States Senate Committee on Foreign Relations by the defendant, CLAIR E. GEORGE, were false, fictitious and fraudulent in that, as the defendant,

CLAIR E. GEORGE, then and there well knew, Felix Rodriguez, also known as Max Gomez, Lt. Col. North and retired Maj. Gen. Secord, among others, were individuals involved in the resupply effort of which the downed C-123K aircraft was a part.

(In violation of Title 18, U.S.C. § 1001).

COUNT TWO

THE GRAND JURY CHARGES:

1. Paragraphs 1 through 37 of Count One are re-alleged and incorporated by reference herein.

2. On or about October 10, 1986, in the District of Columbia, the defendant, CLAIR E. GEORGE, unlawfully, knowingly and willfully made a material false, fictitious and fraudulent statement to a department or agency of the United States, to wit, the United States Senate Committee on Foreign Relations, in a matter within its jurisdiction, to wit, the Committee's investigation of the circumstances surrounding the October 5, 1986, shoot-down of a C-123K aircraft in Nicaragua.

3. It was material to the investigation of the United States Senate Committee on Foreign Relations to determine the nature and extent of any contact the defendant, CLAIR E. GEORGE, had with retired Maj. Gen. Richard V. Secord.

4. On October 10, 1986, the defendant, CLAIR E. GEORGE, appearing as a witness before the United States Senate Committee on Foreign Relations, made the following statement, knowing the underscored material statement to be false:

> [SENATOR KERRY]: . . . How about General Secor[d]? Do you have any contact with General Secor[d]?

[MR. ABRAMS]: I never met him. I read in today's paper that he is alleged to be behind all of this. But I have never met him.

[SENATOR KERRY]: You have never had any contact with him at all?

[MR. ABRAMS]: None whatsoever.

[SENATOR KERRY]: What about you?

[MR. GEORGE]: No. I know his name well and I have known his name for years. But I do not know the man.

5. The above underscored material statement made before the duly authorized **United States Senate Committee on** Foreign Relations was **false, fictitious and fraudulent in** that, as the defendant, **CLAIR E. GEORGE, then and there well** knew, he, **CLAIR E. GEORGE, had personally met retired Maj.** Gen. Secord on **January 20, 1986, and the defendant, CLAIR E.** GEORGE, then and there **well knew that retired Maj. Gen.** Secord had been involved in the **"Iran initiative" and with** Lt. Col. North in **efforts on behalf of the Contras.**

(In violation of Title 18, U.S.C. § 1001).

COUNT THREE

THE GRAND JURY CHARGES:

1. Paragraphs 1 through 37 of Count One are re-alleged and incorporated by reference herein.

2. On or about October 14, 1986, in the District of Columbia, the defendant, CLAIR E. GEORGE, unlawfully, knowingly and willfully made a material false, fictitious and fraudulent statement to a department or agency of the United States, to wit, the United States House of Representatives Permanent Select Committee on Intelligence, in a matter within its jurisdiction, to wit, the Committee's investigation of the circumstances surrounding the shoot-down of a C-123K aircraft on October 5, 1986, in Nicaragua.

3. It was material to the investigation of the United States House of Representatives Permanent Select Committee on Intelligence to learn the identity of any individuals involved in and behind the resupply flights to the Contras.

4. On October 14, 1986, the defendant, CLAIR E. GEORGE, appearing as a witness before the United States House of Representatives Permanent Select Committee on Intelligence, made the following statements, knowing the underscored material statements to be false:

> [MR. CHAIRMAN]: There are a number of airplanes that take off there to supply the Contras regularly. You don't know who they are?

[MR. FIERS]: We know the airplanes by type. We knew, for example, there were two C-123s and two C-7 cargoes. We knew that they were flying out of Ilopango and we knew they were flying both from Aguacate and from Aguacate into Nicaragua. We knew in some cases much less frequently that they were flying down the Pacific air corridors into southern Nicaragua for the purposes of resupply, but as to who was flying the flights and who was behind them, we do not know.

[MR. CHAIRMAN]: And you still don't?

[MR. FIERS]: No.

[MR. GEORGE]: No, sir.

[MR. FIERS]: We know from the newspapers that a company called Corporate Air Services is the company that appears to have some involvement with them, but --

[MR. GEORGE]: What we know at this point is as [Alan] says, is from the press.

5. The above underscored material statements made before the United States House of Representatives Permanent Select Committee on Intelligence by the defendant, CLAIR E. GEORGE, were false, fictitious and fraudulent because in truth and in fact, as the defendant, CLAIR E. GEORGE, then and there well knew, Lt. Col. Oliver L. North, Felix Rodriguez, also known as Max Gomez, and retired Maj. Gen. Richard V. Secord, among others, were involved in and behind Contra resupply flights.

(In violation of Title 18, U.S.C. § 1001).

COUNT FOUR

THE GRAND JURY CHARGES:

1. Paragraphs 1 through 37 of Count One are re-alleged and incorporated by reference herein.

2. On or about October 14, 1986, in the District of Columbia, the defendant, CLAIR E. GEORGE, unlawfully, knowingly and willfully made a material false, fictitious and fraudulent statement to a department or agency of the United States, to wit, the United States House of Representatives Permanent Select Committee on Intelligence, in a manner within its jurisdiction, to wit, the Committee's investigation of the circumstances surrounding the shoot-down of a C-123K aircraft on October 5, 1986, in Nicaragua.

3. It was material to the investigation of the United States House of Representatives Permanent Select Committee on Intelligence to determine what role, if any, Felix Rodriguez, also known as Max Gomez, had in providing supplies to the Contras.

4. On October 14, 1986, the defendant, CLAIR E. GEORGE, appearing as a witness before the United States House of Representatives Permanent Select Committee on Intelligence, made the following statements, knowing the underscored material statement to be false:

> [MR. McHUGH]: . . . Do any of you gentlemen know Ramone Medina? His name has been mentioned.
>
> [MR. GEORGE]: That was the other name mentioned by Mr. Hasenfus. He mentioned two.

> We have identified the first as Felix Rodriguez, and correct me, Alan or Elliott, we don't know what that second name means.
>
> [MR. FIERS]: We still are trying to find out who Ramone Medina is.
>
> [MR. McHUGH]: I'd like to be clear in my own mind as to whether you or anybody in the Government knows as a matter of fact whether Mr. Gomez or Rodriguez was involved in providing supplies to the Contras.
>
> [MR. GEORGE]: I do not know that per se. I do not. Or any record I have ever read.

5. The above underscored material statement made before the United States House of Representatives Permanent Select Committee on Intelligence by the defendant, CLAIR E. GEORGE, was false, fictitious and fraudulent because in truth and in fact, as the defendant, CLAIR E. GEORGE, then and there well knew, Felix Rodriguez had been coordinating and assisting in the aerial resupply of the Contras from the Ilopango air base in El Salvador.

(In violation of Title 18, U.S.C. § 1001).

COUNT FIVE

THE GRAND JURY CHARGES:

1. Paragraphs 1 through 37 of Count One are re-alleged and incorporated by reference herein.

2. On December 3, 1986, in the District of Columbia, the defendant, CLAIR E. GEORGE, having duly taken an oath before a competent tribunal, to wit, the United States Senate Select Committee on Intelligence, in a case in which the law of the United States authorizes an oath to be administered, that he would testify truthfully in proceedings before the United States Senate Select Committee on Intelligence, did willfully and contrary to said oath make material statements that he did not believe to be true, as hereinafter set forth.

3. It was material to the United States Senate Select Committee on Intelligence's investigation to determine the nature and extent of the defendant's, CLAIR E. GEORGE's, personal contact with retired Maj. Gen. Secord and to determine the extent of the defendant's, CLAIR E. GEORGE's, knowledge of retired Maj. Gen. Secord's involvement in the "Iran initiative."

4. At the time and place set forth in paragraph 2 of this Count, the defendant, CLAIR E. GEORGE, appearing as a witness under oath before the United States Senate Select Committee on Intelligence, made the following statements, believing the underscored material statements not to be true:

[MR. HALL]: Was it your understanding that Colonel North or anybody else in the National Security Council or any private parties would have some responsibilities and roles in the financial transactions?

[MR. GEORGE]: I'm told that an individual that had -- I'm told after the fact that an individual who did have a role in the financial affairs of this enterprise was Richard Secord.

[MR. HALL]: Were you aware of any role that Colonel North played?

[MR. GEORGE]: I have no information on Colonel North and funds.

[MR. HALL]: Can you tell us what role Secord did play?

[MR. GEORGE]: I cannot. Please.

. . .

[MR. HALL]: Are there any other details associated with this project that you have not already discussed with us that you are aware of?

[MR. GEORGE]: No. Again, I tell you the people from our Directorate were involved, the people from the other Directorates involved. The critical thing to me was the Finding and the fact that we were told that we were going to get involved in it. Surprise of how that Finding was handled. The delegation of the responsibility to support what I believe was a National Security Council initiative. The people that I sent out to do it. I am sure they told me many, many things that I, sitting here before you, can't recall off the top of my head, and I have again, as I said, gone out of my way not to sit down with Mr. Cave and Mr. Twetton and everyone else and say now let's all remind each other what happened here, because I understand that's the way it should be. But I at no time felt uncomfortable that the law was broken or that we knew money was being siphoned off or --

[MR. HALL]: Did you have --

[MR. GEORGE]: I was a little disturbed about some of the players in the affair. I think I was worried about -- I was worried about, you know, who was Hakim and where is his role in this, and the good General Secord whom I had never laid eyes on but whose name I was familiar with.

[MR. HALL]: Did you have any dealings with Ollie North relative to the Iran program following the Saturday after the January 17th Finding when you met with [him] and Admiral Poindexter?

[MR. GEORGE]: I talked to Ollie North a tremendous amount on the secure phone. Ollie and I dealt very closely on the hostage issue. I don't remember --

[MR. HALL]: The hostage issue --

[MR. GEORGE]: Oh I'll tell you -- I certainly did have a -- meetings with Colonel North, and that was at the time in preparation for the McFarlane visit. He came out to the Agency and Twetton and I and Cave and Ollie all sat around and talked about the logistics needs that they would have for that. I talked to them for a long time.

[MR. HALL]: Did you ever ha[ve] any meetings with General Secord?

[MR. GEORGE]: [The witness nodded in the negative.]

5. The above underscored material statements made under oath before the United States Senate Select Committee on Intelligence by the defendant, CLAIR E. GEORGE, were false, as the defendant, CLAIR E. GEORGE, then and there well knew, in that the defendant, CLAIR E. GEORGE, personally met retired Maj. Gen. Richard V. Secord on January 20, 1986, at a meeting in the Situation Room of the White House, and knew facts about retired Maj. Gen. Secord's role in the "Iran initiative," to wit:

A. Retired Maj. Gen. Secord assisted the CIA in the packing and shipment of TOW missiles and HAWK missile spare parts from the United States to Iran;

B. Retired Maj. Gen. Secord possessed an account through which funds payable to the CIA for the purchase and transport of these missiles passed;

C. Retired Maj. Gen. Secord traveled to Israel to assist the "Iran initiative"; and

D. Retired Maj. Gen. Secord had assisted the CIA in opening an alternative channel of communications to Iran, which became known as the "Second Channel," for the purpose of selling arms and seeking the release of American citizens held hostage in Lebanon.

(In violation of Title 18, U.S.C., § 1621).

COUNT SIX

THE GRAND JURY CHARGES:

1. Paragraphs 1 through 37 of Count One are realleged and incorporated by reference herein.

2. On or about April 5, 1991, in the District of Columbia, the defendant, CLAIR E. GEORGE, acting unlawfully, willfully and knowingly, did corruptly influence, obstruct, and impede and endeavor to influence, obstruct, and impede the due administration of justice by willfully providing false testimony to a duly empaneled federal grand jury, sitting in the District of Columbia, investigating, among other things, the circumstances surrounding the shoot-down of a C-123K aircraft in Nicaragua on October 5, 1986, and the possible obstruction of Congressional inquiries relating thereto, including, but not limited to, the preparation of the opening statement given by the defendant, CLAIR E. GEORGE, before the United States Senate Committee on Foreign Relations on October 10, 1986, including, but not limited to, the false declarations set forth in Count Seven of this Indictment, for the purpose of obstructing and impeding, and endeavoring to obstruct and impede, the federal grand jury's investigation by preventing the federal grand jury from obtaining complete, truthful, and relevant evidence.

(In violation of Title 18, U.S.C. § 1503.)

COUNT SEVEN

THE GRAND JURY CHARGES:

1. Paragraphs 1 through 37 of Count One are realleged and incorporated by reference herein.

2. On or about April 5, 1991, in the District of Columbia, the defendant, CLAIR E. GEORGE, after being duly sworn, unlawfully, knowingly and willfully made false material declarations in a proceeding before a duly authorized federal grand jury, sitting in the District of Columbia, in that the defendant, CLAIR E. GEORGE, appearing as a witness before the federal grand jury, made the following declarations, knowing the underscored material declarations to be false:

> Q Let's start at Tab 7, please. Mr. George, this is a document labeled, "Draft 1, Subject: DDO's Opening Statement." Is this the first draft of your testimony which took place on October the 10th, '86?
>
> A Based on the discussions, Counsel, you and I had previous to this hearing, I now know there were several drafts. If you would have asked me before that, I had forgotten how many times it was drafted; but, yes, as I understand it, this is the first draft.
>
> Q Did you examine each draft after it was done?
>
> A Not necessarily. The drafts would normally be -- I believe this was written by the Central American Task Force, someone there; and it would be possible in a subject as sensitive as this that it would have gone to the General Counsel, and then it could have gone back to the Central American Task Force, and I wouldn't have seen it necessarily, a draft.
>
> I could have seen it and said I didn't like it and sent it back myself.

Q Well, I want to focus on that. During our meeting in our office, the Office of Independent Counsel, you indicated that you did not edit anything out of these drafts?

A I do not recall editing these drafts at all.

Q Okay.

A I was finally handed Draft Number whatever it was, and that was it.

. . .

Q On page two of Draft 3, at the bottom of that I will read the following sentence and it has three lines through it. It says, "Subsequent to the 1984 cutoff, Ilopango airfield in San Salvador was used to support the democratic resistance as a transit point for congressionally authorized humanitarian assistance." And then by the third line through that sentence, it says, "Deleted by DDO."

First of all, is that your handwriting?

A It's not my handwriting.

Q Did you direct that that portion of the draft be excised?

A I cannot believe I did.

Q Do you know who did?

A I do not. Uh, as we said previously, "deleted by DDO" could be by DO, the Director of Operations and they were confusing terminologies. I do not recall getting to this kind of detail in preparing this statement.

3. The above underscored material declarations made before a duly authorized federal grand jury in the District of Columbia by the defendant, CLAIR E. GEORGE, were false, because in truth and in fact, as the defendant, CLAIR E. GEORGE, then and there well knew, the defendant, CLAIR E. GEORGE, had directed Alan D. Fiers, Jr., to remove

portions of the opening statement which the defendant, CLAIR E. GEORGE, stated would "turn the spotlight" on the Administration and thus reveal the role of Lt. Col. North in the Contra resupply effort.

(In violation of Title 18, U.S.C. § 1623).

A TRUE BILL:

Foreperson

_____ _____
Lawrence E. Walsh **Date**
Independent Counsel

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	Criminal No.
	:	
v.	:	
	:	Violations:
ELLIOTT ABRAMS,	:	2 U.S.C. § 192
	:	
Defendant.	:	
	:	

I N F O R M A T I O N

The Independent Counsel charges:

COUNT ONE

1. From July 1985 through 1988, the defendant, ELLIOTT ABRAMS, was Assistant Secretary of State and headed the United States Department of State's Bureau of Inter-American Affairs.

2. As Assistant Secretary of State for Inter-American Affairs, the defendant, ELLIOTT ABRAMS, chaired a Restricted Interagency Group ("RIG") comprised of, among others, representatives of the United States Department of Defense, the Joint Chiefs of Staff, the Central Intelligence Agency ("CIA"), the National Security Council ("NSC"), and the Department of State. During 1985 and 1986, the RIG met regularly to coordinate the activities of these agencies in Central America.

3. From on or about October 9, 1984, through 1987, Alan D. Fiers, Jr., was the Chief of the CIA's Central American

Task Force, the headquarters element that managed CIA operations in Central America.

4. At all times relevant to this Information until November 25, 1986, Oliver L. North was a Lieutenant Colonel in the United States Marine Corps detailed to the NSC staff, where he held the position of Deputy Director, Political-Military Affairs.

5. The defendant, ELLIOTT ABRAMS, dealt with RIG members Mr. Fiers and Lt. Col. North on Central American issues and, on a number of occasions during 1985 and 1986, discussed sensitive matters relating to Central America with them, rather than with the entire RIG.

6. At all times relevant to this Information, the Nicaraguan democratic resistance, also known as the Contras, were insurgents engaged in military and paramilitary operations in Nicaragua.

7. From in or about December 1981 until on or about October 11, 1984, the United States Government, acting principally through the CIA, pursuant to written Presidential findings, had provided the Contras with financial support, arms and military equipment, as well as with supervision and instruction, tactical and other advice, coordination, intelligence and direction.

8. On October 12, 1984, Public Law 98-473 was enacted. It prohibited funds available to the CIA, the Department of Defense, and certain other agencies and entities of

the United States from being obligated or expended in support of military or paramilitary operations in Nicaragua, stating in relevant part:

> During fiscal year 1985 no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

This provision of law was commonly known as the "Boland Amendment."

9. On August 12, 1985, Congress modified the Boland Amendment by appropriating $27 million for humanitarian assistance to the Contras.

10. By Executive Order 12530, dated August 29, 1985, President Reagan created the Nicaraguan Humanitarian Assistance Office ("NHAO") in the Department of State for the purpose of administering the appropriated $27 million for humanitarian assistance to the Contras.

11. Although the Boland Amendment was modified twice, at all times between October 12, 1984, and October 17, 1986, agencies and entities of the United States involved in intelligence activities were prohibited from spending funds available to them (including, without limitation, funds for salaries and transportation) to provide lethal military or paramilitary support to the Contras or to participate in the

planning or execution of military or paramilitary operations in Nicaragua.

12. After enactment of the Boland Amendment and continuing into 1986, certain private individuals, including American citizens, provided financial support and supplied arms, military equipment and logistical support to the Contras. These individuals became known to the defendant, ELLIOTT ABRAMS, and others in the United States Government as the "private benefactors."

13. Between November 1984 and November 1986, Lt. Col. North was actively engaged in raising funds for and providing arms and materiel to the Contras. In addition, Lt. Col. North helped coordinate the activities of the private benefactors in supplying weapons and other lethal equipment to the Contras.

14. In 1985 the defendant, ELLIOTT ABRAMS, became generally aware that Lt. Col. North was working with the Contras and the private benefactors to keep the resistance alive while the United States Government was prohibited from providing lethal assistance to the Contras. From at least December 1985 through October 1986, Lt. Col. North acted as the principal channel of communication between the private benefactors and United States Government officials, including the RIG.

15. On September 4, 1985, as the $27 million NHAO Contra resupply program was being organized, Secretary of State George P. Shultz instructed the defendant, ELLIOTT ABRAMS, that he had to know how the Contras were obtaining support, including

lethal supplies (arms), from sources outside the United States Government. The defendant, ELLIOTT ABRAMS, recorded Secretary Shultz's instruction in his notebook as follows: "monitor Ollie."

16. On May 16, 1986, the defendant, ELLIOTT ABRAMS, attended a National Security Planning Group meeting where President Reagan, among others, addressed alternative funding sources for the Contras. Following that meeting, the defendant, ELLIOTT ABRAMS, informed Secretary Shultz that the Sultan of Brunei was a good prospect for a substantial contribution to the Contras.

17. After receiving approval from Secretary Shultz to solicit a contribution from the Sultan of Brunei, the defendant, ELLIOTT ABRAMS, asked Lt. Col. North for advice on how to provide to the Contras any funds contributed by the Sultan of Brunei. Lt. Col. North provided the defendant, ELLIOTT ABRAMS, with the number of a Swiss bank account into which funds for the Contras could be deposited.

18. In or about July 1986, after the $27 million available to the NHAO program had been depleted, the defendant, ELLIOTT ABRAMS, and Mr. Fiers asked Lt. Col. North whether the private benefactors could provide food for the Contras. Lt. Col. North responded that he would ask the private benefactors to do so.

19. In early 1986, President Reagan had requested that the United States Congress appropriate $100 million for support

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	Criminal No.
	:	
v.	:	
	:	Violations:
ELLIOTT ABRAMS,	:	2 U.S.C. § 192
	:	
Defendant.	:	
	:	

GOVERNMENT'S STATEMENT OF THE
FACTUAL BASIS FOR THE GUILTY PLEA

COUNT ONE

From July 1985 through 1988, ELLIOTT ABRAMS was Assistant Secretary of State and headed the United States Department of State's Bureau of Inter-American Affairs. As Assistant Secretary of State for Inter-American Affairs, MR. ABRAMS chaired a Restricted Interagency Group ("RIG") comprised of, among others, representatives of the United States Department of Defense, the Joint Chiefs of Staff, the Central Intelligence Agency ("CIA"), the National Security Council ("NSC"), and the Department of State. During 1985 and 1986, the RIG met regularly to coordinate the activities of these agencies in Central America.

During 1985 and 1986, Alan D. Fiers, Jr., was the Chief of the CIA's Central American Task Force, the headquarters element that managed CIA operations in Central America. During that period until November 25, 1986, Oliver L. North was a

Lieutenant Colonel in the United States Marine Corps detailed to the NSC staff, where he held the position of Deputy Director, Political-Military Affairs. MR. ABRAMS dealt with Mr. Fiers and Lt. Col. North on Central American issues and on a number of occasions during 1985 and 1986 discussed sensitive matters relating to Central America with them, rather than with the entire RIG.

Throughout 1985 and 1986, the Nicaraguan democratic resistance, also known as the Contras, were insurgents engaged in military and paramilitary operations in Nicaragua. Throughout 1985 and until October 18, 1986, the United States Government was prohibited by the Boland Amendment from providing lethal assistance to the Contras.

After enactment of the Boland Amendment in October 1984 and continuing into 1986, certain private individuals, including American citizens, provided financial support and supplied arms, military equipment and logistical support to the Contras. These individuals became known to ELLIOTT ABRAMS and other United States Government officials as the "private benefactors."

In 1985 MR. ABRAMS became generally aware that Lt. Col. North was working with the Contras and the private benefactors with the goal of keeping the democratic resistance alive while the Boland Amendment prohibited the United States Government from providing the Contras with lethal assistance. From at least December 1985 through October 1986, Lt. Col. North acted as the principal channel of communication between the private

benefactors and United States Government officials, including the RIG.

In August 1985, Congress modified the Boland Amendment by appropriating $27 million for humanitarian, but not lethal, assistance to the Contras. President Reagan created the Nicaraguan Humanitarian Assistance Office ("NHAO") in the Department of State to administer these funds.

On September 4, 1985, as the NHAO program was being organized, Secretary of State George P. Shultz instructed ELLIOTT ABRAMS that he had to know how the Contras were obtaining support, including lethal supplies (arms), from sources outside the United States Government. MR. ABRAMS recorded Secretary Shultz's instruction in his notebook as follows: "monitor Ollie."

In early 1986, before the NHAO funds were depleted, President Reagan requested that Congress authorize the United States Government to provide both humanitarian and lethal assistance to the Contras and to appropriate $100 million for this purpose. In March 1986, the United States House of Representatives rejected the request.

On May 16, 1986, MR. ABRAMS attended a National Security Planning Group meeting where President Reagan, among others, addressed alternative funding sources for the Contras. Following that meeting, MR. ABRAMS informed Secretary Shultz that the Sultan of Brunei was a good prospect for a substantial contribution to the Contras.

After receiving approval from Secretary Shultz to solicit a contribution from the Sultan of Brunei, MR. ABRAMS asked Lt. Col. North for advice on how to provide to the Contras any funds contributed by the Sultan of Brunei. Lt. Col. North provided ELLIOTT ABRAMS with the number of a Swiss bank account into which funds for the Contras could be deposited.

In July 1986, after the $27 million available to the NHAO program had been depleted, MR. ABRAMS and Mr. Fiers asked Lt. Col. North whether the private benefactors could provide food for the Contras. Lt. Col. North replied that he would ask the private benefactors to do so.

Congress eventually reconsidered President Reagan's request for $100 million to assist the Contras, but as of October 17, 1986, the appropriation was being held in conference awaiting final enactment, and the funds were not available. It was the opinion of MR. ABRAMS that disclosure of Lt. Col. North's activities in the resupply of the Contras would jeopardize final enactment of the appropriation.

On October 5, 1986, a C-123K aircraft carrying arms and other supplies to the Contras was shot down over Nicaragua. Three crewmen were killed; Eugene Hasenfus, the sole survivor, was captured by the Nicaraguans.

Following press reports regarding the shootdown, the United States Senate Committee on Foreign Relations requested briefings from United States Government officials, including ELLIOTT ABRAMS, on the circumstances surrounding the downed plane

and the resupply operation. MR. ABRAMS appeared before the Committee on Foreign Relations to provide the briefing on October 10, 1986.

In response to a request that he comment on an article in The Los Angeles Times reporting that an elaborate system supplied the Contras, ELLIOTT ABRAMS explained the United States Government's purported "distance" from that lethal supply system as follows:

> [MR. ABRAMS]: . . . In the last two years, since Congress cut off support to the resistance, this supply system has kept them alive. It is not our supply system. It is one that grew up after we were forbidden from supplying the resistance, and we have been kind of careful not to get closely involved with it and to stay away from it
>
> I think that people who are supplying the Contras believe that we generally approve of what they are doing -- and they are right. We do generally approve of what they are doing, because they are keeping the Contras alive while Congress makes its decision, which each House has separately, though obviously final legislation is not yet ready.
>
> So, the notion that we are generally in favor of people helping the Contras is correct.
>
> We do not encourage people to do this. We don't round up people, we don't write letters, we don't have conversations, we don't tell them to do this, we don't ask them to do it. But I think it is quite clear, from the attitude of the administration, the attitude of the administration is that these people are doing a very good thing, and if they think they are doing something that we like, then, in a general sense, they are right. But that is without any encouragement and coordination from us, other than a public speech by the President, that kind of thing, on the public record.

At the time MR. ABRAMS made this statement he was aware that Lt. Col. North had been in contact with people supplying the Contras, had conversations with people supplying the Contras and had asked and encouraged them to supply the Contras.

COUNT TWO

In August 1986, after receiving authorization from Secretary of State George P. Shultz, ELLIOTT ABRAMS requested from a representative of the Sultan of Brunei a contribution of $10 million to the Contras. MR. ABRAMS provided to the Sultan's representative a Swiss bank account number obtained from Lt. Col. North.

On or about September 16, 1986, MR. ABRAMS learned of a Department of State cable reporting that the Sultan of Brunei had agreed to contribute $10 million to the Contras. On or about September 26, 1986, MR. ABRAMS learned of a Department of State cable reporting that the $10 million had been sent from the Sultan to the Swiss bank account and MR. ABRAMS had that expectation on October 14, 1986.

Following the press reports regarding the shootdown described in the statement of the factual basis for Count One, the United States House of Representatives Permanent Select Committee on Intelligence requested a briefing from United States Government officials, including ELLIOTT ABRAMS, regarding the circumstances surrounding the shootdown and the lethal resupply operation. MR. ABRAMS appeared before the Committee to provide the briefing on October 14, 1986.

During the briefing, ELLIOTT ABRAMS responded to a series of questions regarding foreign government help for the Contras as follows:

> [THE CHAIRMAN]: Do you know if any foreign government is helping to supply the contras?

There is a report in the LA paper, for example, that the Saudis are.

[MR. GEORGE]: No sir, we have no intelligence of that.

[MR. ABRAMS]: I can only speak on that question for the last fifteen months when I have been in this job, and that story about the Saudis to my knowledge is false. I personally cannot tell you about pre-1985, but in 1985-1986, when I have been around, no.

[THE CHAIRMAN]: Is it also false with respect to other governments as well?

[MR. ABRAMS]: Yes, it is also false.

Respectfully submitted,

LAWRENCE E. WALSH
Independent Counsel

By: 
Craig A. Gillen
John Q. Barrett
Thomas E. Baker
Associate Counsel

Office of Independent Counsel
555 Thirteenth Street, N.W.
Suite 701 West
Washington, D.C. 20004

October 7, 1991

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on May 15, 1990

UNITED STATES OF AMERICA	:	Criminal No. 91- 0665
v.	:	
DUANE R. CLARRIDGE,	:	Grand Jury Original
Defendant.	:	
	:	Violations: 18 U.S.C. § 1621 18 U.S.C. § 1001
	:	(Perjury; False Statements)

FILED IN OPEN COURT

NOV 26 1991

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

HAROLD H. GREENE, J.

INDICTMENT

RECEIVED
1991 NOV 25 P 5:22
OFFICE OF
INDEPENDENT COUNSEL

COUNT ONE

INTRODUCTION

1. The Central Intelligence Agency ("CIA") is a United States Government entity established by the National Security Act of 1947. At all times relevant to this Indictment, the general functions of the CIA were, among other things, to perform foreign clandestine intelligence-gathering, to analyze intelligence, and to perform authorized covert operations for the United States Government. Covert operations and certain intelligence-gathering tasks were performed by the CIA's Directorate of Operations, which was divided into geographic and functional divisions, each headed by a senior CIA officer. The CIA also controlled certain airlines, known as CIA proprietary airlines, that, in addition to conducting regular commercial cargo flights under contract with private parties, provided assistance to certain CIA activities.

2. At all times relevant to this Indictment, the defendant, DUANE R. CLARRIDGE, was a senior officer of the CIA. From October 1984 to February 1986, the defendant, DUANE R. CLARRIDGE, held the position of Chief of the European Division in the CIA's Directorate of Operations, located at CIA headquarters in Langley, Virginia.

3. At all times relevant to this Indictment, intelligence activities undertaken by the United States were subject to the restrictions and limitations of Executive

Order 12333, signed by President Reagan on December 4, 1981, which, in part, prohibited any United States Government agency, except the CIA, from conducting covert actions without a determination by the President that an agency other than the CIA was more likely to achieve a particular objective. At all times relevant to this Indictment, intelligence activities conducted by the CIA were governed by Title 22, United States Code section 2422, which provided, in pertinent part, that "[n]o funds appropriated under the authority of this chapter or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States." On January 18, 1985, President Reagan signed National Security Decision Directive 159, which required that the President specifically approve by a written finding all covert actions undertaken by any United States Government agency or entity, including the CIA.

4. The National Security Council ("NSC") is a United States Government entity established by the National Security Act of 1947. At all times relevant to this Indictment, the function of the NSC was to advise the President on the integration of domestic, foreign and military policies relating to the national security, to

facilitate cooperation among the military services and other departments and agencies of the government in matters involving the national security, and to review, guide and direct foreign intelligence and covert action activities. The Assistant to the President for National Security Affairs ("National Security Advisor") was responsible for developing, coordinating and implementing national security policy as approved by the President and was assisted in these duties by the NSC staff.

5. At all times relevant to this Indictment until November 25, 1986, Oliver L. North was a Lieutenant Colonel in the United States Marine Corps detailed to the NSC staff, where he held the position of Deputy Director, Political-Military Affairs. Among other things, Lt. Col. North was assigned to take part in certain activities with respect to counterterrorism, including efforts to obtain the release of American citizens held hostage in Lebanon, and to participate in the United States initiative involving the sale of arms to elements in Iran. In November 1985, Lt. Col. North's superiors at the NSC were Robert C. McFarlane, the National Security Advisor, and Vice Admiral John M. Poindexter, the Deputy National Security Advisor. On November 25, 1986, Lt. Col. North was discharged from the NSC staff.

6. Beginning with the overthrow of the Shah of Iran on or about January 16, 1979, and the seizure of the United States Embassy in Iran and its staff on November 4,

1979, relations between the United States Government and the Government of Iran were characterized by mutual hostility and tension. At all times relevant to this Indictment, the United States Government embargoed shipments of arms to Iran. In January 1984, the Secretary of State designated Iran a sponsor of international terrorism and, thereafter, the United States actively urged its allies not to permit the shipment of arms to Iran.

7. As of June 1985, seven American citizens who had been kidnapped in Lebanon by pro-Iranian terrorists were being held hostage.

8. Beginning in the Summer of 1985, representatives of the United States Government and the Government of Israel had discussions regarding the desirability of providing Israeli arms to Iran in an effort to obtain the release of American hostages in Lebanon and improve relations between the United States and Iran. Following these discussions, the United States Government became part of an initiative that involved the shipment by Israel of weapons to Iran. Lt. Col. North was assigned to monitor these shipments.

9. The first shipments by Israel of weapons to Iran took place in August and September of 1985, and helped secure the release in September 1985 of an American held hostage in Lebanon. Thereafter, another weapons shipment

from Israel to Iran was planned. This shipment was to include HAWK missiles.

10. On Sunday, November 17, 1985, a senior Israeli official telephoned Lt. Col. North with an urgent request for assistance in overcoming certain operational difficulties that the Israelis were experiencing with the imminent shipment, which at that point was scheduled for Wednesday, November 20, 1985. National Security Advisor Robert McFarlane ordered Lt. Col. North to assist the Israelis in solving these operational difficulties.

11. Lt. Col. North promptly began taking steps to address the operational difficulties that were impeding the shipment. On Monday, November 18, 1985, Lt. Col. North spoke with a representative of the Israeli Government to discuss operational details with respect to the shipment. On this same day, Lt. Col. North contacted retired United States Air Force Major General Richard V. Secord to enlist his help in overcoming the operational difficulties.

12. Late in the afternoon on or about November 19, 1985, Lt. Col. North telephoned Vincent M. Cannistraro. Mr. Cannistraro was a CIA employee detailed to the NSC staff, and was a previous professional associate of the defendant, DUANE R. CLARRIDGE.

13. Lt. Col. North asked Mr. Cannistraro to meet with him later that evening, stressing to Mr. Cannistraro the urgency of the meeting. Mr. Cannistraro met with Lt. Col.

North at Charley's Place, a restaurant in McLean, Virginia. The defendant, DUANE R. CLARRIDGE, was also present at this meeting. During this meeting, Lt. Col. North discussed with the defendant, DUANE R. CLARRIDGE, and Mr. Cannistraro the trouble that Lt. Col. North was having obtaining flight clearances in Europe for an aircraft that would be travelling to Iran. Lt. Col. North stated at the time that the cargo would be military equipment.

14. Beginning not later than Thursday, November 21, 1985, the defendant, DUANE R. CLARRIDGE, became operationally involved in assisting Lt. Col. North with the shipment of weapons to Iran. The defendant, DUANE R. CLARRIDGE, provided assistance that included, among other things, informing Lt. Col. North that a CIA proprietary airline was available to transport the weapons to Iran; contacting CIA officers overseas, directing them to provide assistance to the shipment and remaining in contact with these officials throughout the weekend of November 23 and 24, 1985; and allowing Lt. Col. North on Saturday, November 23, 1985, to coordinate the shipment from the office of the defendant, DUANE R. CLARRIDGE, at CIA headquarters in Langley, Virginia.

15. On or about November 25, 1985, the CIA proprietary airline delivered the cargo of HAWK missiles to Iran.

16. In early November 1986, details of certain aspects of the United States Government's initiative toward Iran began to be reported in the press. As a result of this public exposure, various committees of the United States Congress, as well as a Special Review Board established by President Reagan, conducted inquiries to ascertain the facts surrounding the United States Government's initiative toward Iran.

THE GRAND JURY CHARGES:

17. On December 2, 1986, in the District of Columbia, the defendant, DUANE R. CLARRIDGE, having duly taken an oath before a competent tribunal, to wit, the United States Senate Select Committee on Intelligence, in a case in which the law of the United States authorizes an oath to be administered, that he would testify truthfully in proceedings before the United States Senate Select Committee on Intelligence, did willfully and contrary to said oath make a material statement that he did not believe to be true, as hereinafter set forth.

18. It was material to the investigation of the United States Senate Select Committee on Intelligence to determine whether the defendant, DUANE R. CLARRIDGE, had learned prior to November 24, 1985, that the November 1985 shipment to Iran would contain weapons.

19. On December 2, 1986, the defendant, DUANE R. CLARRIDGE, appearing as a duly sworn witness under oath before the United States Senate Select Committee on Intelligence, made the following statement, believing the underscored material statement not to be true:

> Mr. Newsom: At what point did you become, did you have knowledge that the cargo of the plane was actually weapons?
>
> Mr. Clarridge: Well, as I say, the trouble is that when I really got a fix on it was in January when Charlie Allen debriefed a -- the Iranian go-between in all this. OK. (p. 20)

20. The above underscored material statement made under oath before the duly authorized United States Senate Select Committee on Intelligence by the defendant, DUANE R. CLARRIDGE, was false, as the defendant, DUANE R. CLARRIDGE, then and there well knew, in that he had learned prior to November 24, 1985, that the November 1985 shipment to Iran would contain weapons.

(In violation of Title 18, U.S.C. § 1621.)

COUNT TWO

1. Paragraphs 1 through 16 of Count One are realleged and incorporated by reference herein.

2. On December 2, 1986, in the District of Columbia, the defendant, DUANE R. CLARRIDGE, having duly taken an oath before a competent tribunal, to wit, the United States Senate Select Committee on Intelligence, in a case in which the law of the United States authorizes an oath to be administered, that he would testify truthfully in proceedings before the United States Senate Select Committee on Intelligence, did willfully and contrary to said oath make a material statement that he did not believe to be true, as hereinafter set forth.

3. It was material to the investigation of the United States Senate Select Committee on Intelligence to determine the extent of the knowledge of United States Government officials concerning the November 1985 shipment of weapons to Iran.

4. On December 2, 1986, the defendant, DUANE R. CLARRIDGE, appearing as a duly sworn witness under oath before the United States Senate Select Committee on Intelligence, made the following statements, believing the underscored material statement not to be true:

> Senator Specter: Well, but North -- Colonel North never told you that there was military equipment involved.
>
> Mr. Clarridge: Well, that's a different issue. That's a different issue.

Senator Specter: You're talking about a different issue on a different flight?

Mr. Clarridge: On a different flight.

Senator Specter: Had he ever told you about the military equipment being on the --

Mr. Clarridge: -- flight from Tel Aviv to Tabriz?

Senator Specter: Yes.

Mr. Clarridge: No, and I can't say that he knew. I can't say for sure that he knew. **(pp. 72-73)**

5. **The above underscored material statement made** under oath before **the duly authorized United States Senate** Select Committee **on Intelligence by the defendant, DUANE R.** CLARRIDGE, was **false, as the defendant, DUANE R. CLARRIDGE,** then and there **well knew, in that he learned prior to** November 24, 1985, **that Lt. Col. North was aware that the** cargo on the November **1985 flight from Tel Aviv to Tabriz** would be weapons.

(In violation of Title 18, U.S.C. § 1621.)

COUNT THREE

1. Paragraphs 1 through 16 of Count One are realleged and incorporated by reference herein.

2. On December 2, 1986, in the District of Columbia, the defendant, DUANE R. CLARRIDGE, having duly taken an oath before a competent tribunal, to wit, the United States Senate Select Committee on Intelligence, in a case in which the law of the United States authorizes an oath to be administered, that he would testify truthfully in proceedings before the United States Senate Select Committee on Intelligence, did willfully and contrary to said oath make material statements that he did not believe to be true, as hereinafter set forth.

3. It was material to the investigation of the United States Senate Select Committee on Intelligence to determine whether the defendant, DUANE R. CLARRIDGE, had learned prior to November 24, 1985, that the November 1985 shipment to Iran was part of a United States Government initiative toward Iran that involved the transfer of weapons to Iran in an attempt to cause the release of Americans taken hostage in Lebanon.

4. On December 2, 1986, the defendant, DUANE R. CLARRIDGE, appearing as a duly sworn witness under oath before the United States Senate Select Committee on Intelligence, made the following statements, believing the underscored material statements not to be true:

Mr. Newsom: At that time, did you have any concern about the whether necessary or sufficient authority existed to use a U.S. proprietary aircraft under the control of the CIA for this kind of mission?

Mr. Clarridge: For oil spare parts?

Mr. Newsom: For using the CIA proprietary to fly a mission destined for Iran.

Mr. Clarridge: Well, the way I talked to Juchniewicz about it was that this would, although the NSC was interested in it, it seemed to be a straight commercial deal. In other words, private people apparently hiring our proprietary. That was the reason that he felt that he didn't have to go any higher apparently on the approval process. (p. 13-14)

. . .

Senator Eagleton: . . . You thought this was a commercial undertaking, right, this flight? We're going back to this flight.

Mr. Clarridge: Right. (p. 54)

. . .

Senator Eagleton: Didn't you have a second thought or question, "Here's a hotshot from the NSC who's on this interagency group coming to my personal office, one on one. Maybe this might be a shade more than a commercial endeavor."

Mr. Clarridge: I'm sorry, I didn't see it any more than what he was telling me. (pp. 56-57)

5. The above underscored material statements made under oath before the duly authorized United States Senate Select Committee on Intelligence by the defendant, DUANE R. CLARRIDGE, were false, as the defendant, DUANE R. CLARRIDGE, then and there well knew, in that he had learned prior to

November 24, 1985, that the November 1985 shipment to Iran was part of a United States Government initiative toward Iran that involved the transfer of weapons to Iran in an attempt to cause the release of Americans taken hostage in Lebanon.

(In violation of Title 18, U.S.C. § 1621.)

COUNT FOUR

1. Paragraphs 1 through 16 of Count One are realleged and incorporated by reference herein.

2. On or about December 11, 1986, in the District of Columbia, the defendant, DUANE R. CLARRIDGE, having duly taken an oath before a competent tribunal, to wit, the United States House of Representatives Permanent Select Committee on Intelligence, in a case in which the law of the United States authorizes an oath to be administered, that he would testify truthfully in proceedings before the United States House of Representatives Permanent Select Committee on Intelligence, did willfully and contrary to said oath make a material statement that he did not believe to be true, as hereinafter set forth.

3. It was material to the investigation of the United States House of Representatives Permanent Select Committee on Intelligence to determine whether the defendant, DUANE R. CLARRIDGE, had learned prior to November 24, 1985, that the November 1985 shipment to Iran would contain weapons.

4. On December 11, 1986, the defendant, DUANE R. CLARRIDGE, appearing as a duly sworn witness under oath before the United States House of Representatives Permanent Select Committee on Intelligence, made the following statements, believing the underscored material statement not to be true:

> Mr. Clarridge: . . . Now, when reporting the flight and the difficulties with the [Asian Government], our frustration, told us that the [Asian] government told them that the pilot of the aircraft in passing through [that country's] air space had informed the ground controller that he was carrying weapons. That was the first indication that we had that maybe that something other than oil drilling equipment was on the plane. (pp. 68-69)

5. The above underscored material statement made under oath before the duly authorized United States House of Representatives Permanent Select Committee on Intelligence by the defendant, DUANE R. CLARRIDGE, was false, as the defendant, DUANE R. CLARRIDGE, then and there well knew, in that he had learned prior to November 24, 1985, that the November 1985 shipment to Iran would contain weapons.

(In violation of Title 18, U.S.C. § 1621.)

COUNT FIVE

1. Paragraphs 1 through 16 of Count One are realleged and incorporated by reference herein.

2. On December 1, 1986, President Reagan established a Special Review Board, also known as "the Tower Commission," to examine the proper role of the NSC staff in national security operations, including the arms transfers to Iran.

3. On or about December 18, 1986, in the District of Columbia, the defendant, DUANE R. CLARRIDGE, unlawfully, knowingly and willfully made a material false, fictitious and fraudulent statement to a department or agency of the United States, to wit, the President's Special Review Board, in a matter within the Special Review Board's jurisdiction, to wit, its investigation of the extent of, and authorization for, United States intelligence activities in connection with the United States Government's initiative toward Iran.

4. It was material to the investigation of the President's Special Review Board to determine whether the defendant, DUANE R. CLARRIDGE, had learned prior to November 24, 1985, that the November 1985 shipment to Iran would contain weapons.

5. On December 18, 1986, the defendant, DUANE R. CLARRIDGE, appearing as a witness before the President's Special Review Board, made the following statements, knowing the underscored material statement to be false:

> Mr. Clarridge: . . . Now, I might mention, to go back to the November episode, because the question was asked when did I feel that that shipment in November, the 25th, had had weapons on board.
>
> . . .
>
> Mr. Clarridge: . . . <u>But the first real indications were from the [highly reliable intelligence], as I say, around the 26th or 27th of November</u>.
> (pp. 14-15)

6. The above underscored material statement made before the duly authorized President's Special Review Board by the defendant, DUANE R. CLARRIDGE, was false, fictitious and fraudulent, as the defendant, DUANE R. CLARRIDGE, then and there well knew, in that he had learned prior to November 24, 1985, that the November 1985 shipment to Iran would contain weapons.

(In violation of Title 18, U.S.C. § 1001.)

COUNT SIX

1. Paragraphs 1 through 16 of Count One are realleged and incorporated by reference herein.

2. On or about August 4, 1987, in the District of Columbia, the defendant, DUANE R. CLARRIDGE, having duly taken an oath before competent tribunals, to wit, the United States Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition and the United States House of Representatives Select Committee to Investigate Covert Arms Transactions with Iran ("Select Committees"), in a case in which the law of the United States authorizes an oath to be administered, that he would testify truthfully in proceedings before the Select Committees, did willfully and contrary to said oath make material statements that he did not believe to be true, as hereinafter set forth.

3. It was material to the investigation of the Select Committees to determine whether the defendant, DUANE R. CLARRIDGE, had learned prior to November 24, 1985, that the November 1985 shipment to Iran would contain weapons.

4. On August 4, 1987, the defendant, DUANE R. CLARRIDGE, appearing as a duly sworn witness under oath before the Select Committees, made the following statements, believing the underscored material statements not to be true:

> Mr. Eggleston: As of this early time, your initial conversations with Colonel North, did you know or had you been informed by Colonel North what was on the plane?
>
> Mr. Clarridge: <u>No, I was not</u>. (p. 8)

. . .

Mr. Eggleston: As of November 22, I take it, you know that there is a flight going from Israel into [a European city], you know or believe that it is going to be broken down into at least three flights and fly from [that European city] into Iran, you know that it relates to the hostages in some fashion, you know -- and you also believe that -- it is your understanding as of that time that the cargo onboard is oil drilling equipment; is that a fair summary of the state of your knowledge as best you recall it today as of November 22nd?

Mr. Clarridge: Yes. (pp. 20-21)

. . .

Mr. Eggleston: Okay. But they knew weapons were going to be on the flight?

Mr. Clarridge: If that is what you tell me, yes. I can see this, they must have.

Mr. Eggleston: The person who gave you the problem knew. The person you gave the problem to solve knew. The person who was helping, [a State Department official], knew. The [government of the European country] knew. But you did not know?

Mr. Clarridge: That is the way it was. (p. 32)

. . .

Mr. Eggleston: You had not heard, I take it, other than this cable from the -- that reflected what the pilots had said, it is your testimony that you hadn't heard that it was anything other than oil-drilling equipment?

Mr. Clarridge. I had not. (p. 42)

5. The above underscored material statements made under oath before the duly authorized Select Committees by

the defendant, DUANE R. CLARRIDGE, were false, as the defendant, DUANE R. CLARRIDGE, then and there well knew, in that he had learned prior to November 24, 1985, that the November 1985 shipment to Iran would contain weapons.

(In violation of Title 18, U.S.C. § 1621.)

COUNT SEVEN

1. Paragraphs 1 through 16 of Count One are realleged and incorporated by reference herein.

2. On or about April 27, 1987, in the District of Columbia, the defendant, DUANE R. CLARRIDGE, unlawfully, knowingly and willfully made material false, fictitious and fraudulent statements to a department or agency of the United States, to wit, the United States House of Representatives Select Committee to Investigate Covert Arms Transactions With Iran ("House Select Committee"), in a matter within its jurisdiction, to wit, its investigation of the extent of, and authorization for, United States intelligence activities in support of the United States Government's initiative to Iran.

3. It was material to the investigation of the House Select Committee to determine whether the defendant, DUANE R. CLARRIDGE, had learned prior to November 24, 1985, that the November 1985 shipment to Iran would contain weapons and that there was an NSC operation involving arms and hostages.

4. On April 27, 1987, the defendant, DUANE R. CLARRIDGE, appearing as a witness under oath before the duly authorized staff of the House Select Committee, made the following statements, knowing the underscored material statements to be false:

> Q Before I continue with this, let me ask you the state of your knowledge about this initiative as of the time Colonel North called you on November 21? Did you have any knowledge as of that time that the NSC was involved in an operation that involved arms and hostages?

A No, I did not. (pp. 20-21)

. . .

Q So as of the November 23rd, you still had no knowledge whatsoever that the aircraft were going to be carrying weapons?

A No, I did not. (p. 56)

. . .

Q Did Colonel North tell you in November of 1985 that military equipment was going to be on these flights that you were helping to get the flight clearance for?

A No, he didn't. He told me it was sophisticated oil drilling equipment, at which point I, in all of this, I can't precisely pin down.

Q Colonel North told you that there was going to be military equipment on this flight?

A No. No. (p. 77)

. . .

Q In any event, on 25th of November, you thought the cargo was oil parts; is that right?

A Correct. (p. 92)

5. The above underscored material statements made before the duly authorized staff of the House Select Committee by the defendant, DUANE R. CLARRIDGE, were false, fictitious and fraudulent, as the defendant, DUANE R. CLARRIDGE, then and there well knew, in that he had learned prior to November 24, 1985, that the November 1985 shipment to Iran would contain weapons, and that the NSC was involved in an operation that involved arms and hostages and was

supporting a shipment of weapons to Iran.

(In violation of Title 18, U.S.C. § 1001).

A TRUE BILL:

Foreperson

Lawrence E. Walsh
Independent Counsel

November 26, 1991
Date

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury 91-1 Sworn in on January 16, 1991

UNITED STATES OF AMERICA	**Criminal No.** 92- 0235
v.	
CASPAR W. WEINBERGER,	**Grand Jury Original**
Defendant.	**Violations:** **Title 18 U.S.C. § 1505** **(Obstruction of Congress)** **Title 18 U.S.C. § 1001** **(False Statement)** **Title 18 U.S.C. § 1621** **(Perjury)**

FILED IN OPEN COURT

JUN 1 6 1992

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

I N D I C T M E N T

19308

COUNT I
(Obstruction of Congress)

Introduction

1. From 1981 to November 1987, the defendant, CASPAR W. WEINBERGER, was the Secretary of Defense and a statutory member of the National Security Council ("NSC").

2. At all times relevant to this Indictment, the Secretary of Defense was the head of the Department of Defense ("DoD").

3. At all times relevant to this Indictment, the NSC was a government entity established by the National Security Act of 1947, whose statutory members were the President of the United States, the Vice President, the Secretary of State and the Secretary of Defense. The NSC advised the President on the integration of domestic, foreign and military policies relating to the national security; facilitated cooperation among the military services and other departments and agencies of the government in matters involving the national security; and reviewed, guided and directed foreign intelligence and covert action activities.

4. Beginning with the overthrow of the Shah of Iran on or about January 16, 1979, and the seizure of the United States Embassy in Iran and its staff on November 4, 1979, relations between the United States Government and the Government of Iran were characterized by mutual hostility and tension. At all times relevant to this Indictment, the United States Government embargoed arms sales to Iran. In January 1984, Secretary of State George P. Shultz designated

Iran as a sponsor of international terrorism and, thereafter, the United States Government actively urged its allies not to permit the shipment of arms to Iran, in part because of its sponsorship of international terrorism and the continuation of the Iran-Iraq war.

5. In August 1985, Robert C. McFarlane, the Assistant to the President for National Security Affairs, briefed President Ronald Reagan, Secretary Shultz, and the defendant, CASPAR W. WEINBERGER, about an Israeli proposal to sell arms to Iran to obtain the release of Americans held hostage in Lebanon. The defendant, CASPAR W. WEINBERGER, and Secretary Shultz objected to the plan and advised the President against it. This plan and subsequent efforts to obtain the release of the hostages through the sale of arms to Iran became known as the Iran initiative.

6. In August and September of 1985, United States Government officials were informed that Israel had shipped 508 United States-supplied TOW anti-tank missiles to Iran with the expectation that the United States Government would provide Israel with replacement TOW missiles. Following these Israeli TOW shipments to Iran, the Reverend Benjamin Weir, an American held hostage in Lebanon, was released from captivity.

7. On November 9, 1985, Mr. McFarlane told the defendant, CASPAR W. WEINBERGER, about new negotiations with

Iranians and Israelis involving the exchange of arms for hostages.

8. On November 10, 1985, Mr. McFarlane told the defendant, CASPAR W. WEINBERGER, that the current proposal involved the release of all American hostages and the transfer to Iran, through the Israelis, of HAWK anti-aircraft missiles.

9. On Tuesday, November 19, 1985, Mr. McFarlane asked the defendant, CASPAR W. WEINBERGER, to try to obtain 500 HAWK missiles for sale to Israel to "pass on" to Iran in return for which five hostages would be released on Thursday, November 21, 1985. Major General Colin L. Powell, the Senior Military Assistant to the defendant, CASPAR W. WEINBERGER, made efforts to determine whether 500 HAWK missiles were available and what legal requirements would apply to the sale. General Powell reported to the defendant, CASPAR W. WEINBERGER, that 500 HAWK missiles could not be sold to Israel or Iran without Congressional notification and that breaking the sale into several packages of 28 HAWKs each (to keep the value of each package under a $14 million Congressional notification threshold) would be a clear violation of law. The defendant, CASPAR W. WEINBERGER, provided this information to Mr. McFarlane.

10. On Wednesday, November 20, 1985, the defendant, CASPAR W. WEINBERGER, told Mr. McFarlane that he objected to the sale of arms for hostages. Mr. McFarlane

responded that the President had already decided to do it through Israel.

11. Later that day, Wednesday, November 20, 1985, Mr. McFarlane informed the defendant, CASPAR W. WEINBERGER, that the Israelis would sell 120 HAWKs to the Iranians, and that there would be a hostage release on Friday, November 22, 1985.

12. On or about Sunday, November 24, 1985, a cargo of 18 HAWK missiles was sent from Israel to Iran. United States Government officials were informed that the Iranians were dissatisfied with the cargo, and additional HAWK missiles were not sent.

13. On December 7, 1985, the defendant, CASPAR W. WEINBERGER, attended a meeting at the White House with President Reagan, Chief of Staff to the President Donald T. Regan, Secretary Shultz, Deputy Director of Central Intelligence John N. McMahon, newly-appointed Assistant to the President for National Security Affairs Vice Admiral John M. Poindexter, and Mr. McFarlane, who recently had resigned his position as Assistant to the President for National Security Affairs. Mr. McFarlane reviewed the development of the Iran initiative up to that point, including the TOW missile shipments prior to the release of the Reverend Weir and the November 1985 HAWK missile shipment. Mr. McFarlane then outlined a plan for additional sales of weapons through Israel to Iran to obtain the release of the remaining

American hostages. The defendant, CASPAR W. WEINBERGER, argued that the United States had an embargo in effect that made arms sales to Iran illegal, that the President could not violate the embargo, and that "washing" the transaction through Israel would not make it legal. President Reagan responded that he could answer charges of illegality but that he could not answer the charge that he had passed up a chance to free the hostages.

14. Following the December 7, 1985 meeting, President Reagan sent Mr. McFarlane to London to open negotiations with Iranian and Israeli representatives, without making any United States commitment to transfer arms.

15. On December 10, 1985, following Mr. McFarlane's return from London, the defendant, CASPAR W. WEINBERGER, attended a meeting at the White House with President Reagan, Chief of Staff Regan, Director of Central Intelligence William J. Casey, Admiral Poindexter, and Mr. McFarlane. At the meeting, Mr. McFarlane recommended that no more arms be sold to Iran, but he also reminded the group that the United States still had to replenish the 500 TOW missiles that Israel had shipped to Iran before the Reverend Weir was released.

16. On January 6, 1986, the defendant, CASPAR W. WEINBERGER, met with Admiral Poindexter, who outlined a new Israeli plan to sell weapons to Iran to obtain the release of

the American hostages. The defendant, CASPAR W. WEINBERGER, objected to the plan.

17. On January 7, 1986, the defendant, CASPAR W. WEINBERGER, attended a meeting at the White House with President Reagan, Vice President George Bush, Attorney General Edwin Meese, III, Director Casey and Secretary Shultz. At the meeting, the President favored the plan to sell missiles to Iran, through Israel, in exchange for the release of American hostages.

18. On January 17, 1986, President Reagan formally approved, by Presidential Finding, a covert plan in which the United States would sell the weapons to Iran through an American intermediary, rather than through Israel.

19. In furtherance of this plan, during February 1986, 1,000 TOW missiles were sold to Iran.

20. Between May and November 1986, additional weapons and related parts were sold to Iran, and two Americans held hostage in Lebanon were released.

21. In early November 1986, there were public reports that United States Government officials had engaged in arms-for-hostages deals with Iran.

22. On November 10, 1986, the defendant, CASPAR W. WEINBERGER, attended a White House meeting with President Reagan, Vice President Bush, Secretary Shultz, Attorney General Meese, Director Casey, Chief of Staff Regan, Admiral Poindexter, and Acting Deputy Assistant to the President for

National Security Affairs Alton G. Keel, Jr. Admiral Poindexter briefed the meeting about operational details of the Iran initiative, but he omitted mention of the November 1985 HAWK missile shipment and did not acknowledge any United States role in or approval of any shipments prior to the Presidential Finding of January 17, 1986.

23. On November 12, 1986, the defendant, CASPAR W. WEINBERGER, attended a briefing for Congressional leaders at the White House with the same officials who attended the November 10, 1986 meeting. Admiral Poindexter briefed the Congressional leaders about the Iran initiative but, once again, did not acknowledge any United States role in or approval of any 1985 shipments, including the November 1985 HAWK missile shipment. In response to a question by Senate Minority Leader Robert C. Byrd, Admiral Poindexter stated that the initial contacts with the Iranians had been in 1985 but there had been no transfer of material to Iran then because it took time to assess the contacts and issue a Finding.

24. On November 13, 1986, President Reagan addressed the nation and purported to set out the facts about the Iran initiative.

25. On November 19, 1986, President Reagan held a news conference about the Iran initiative. During the news conference President Reagan said "we, as I say, have had nothing to do with other countries or their shipments of arms

or doing what they're doing," and he denied that a third country had been involved in shipments of United States arms to Iran. Later that evening, President Reagan acknowledged that, in fact, a third country had been involved. But the President did not disclose that arms shipments had taken place in 1985, that the third country was Israel, or that he had approved any of the 1985 shipments.

26. During the period leading up to November 24, 1986, officials within the White House and other Executive branch agencies expressed repeated concern that the 1985 arms shipments to Iran, and in particular the November 1985 HAWK missile shipment, had been illegal.

27. On or about November 20, 1986, Abraham D. Sofaer, the Legal Adviser of the Department of State, objected to proposed testimony by Director Casey, which stated that no one in the United States Government had contemporaneous knowledge of the November 1985 HAWK missile shipment. Mr. Sofaer was aware of a contemporaneous note from November 1985 indicating that Mr. McFarlane had told Secretary Shultz about the impending shipment. Secretary Shultz supported Mr. Sofaer's efforts to prevent this false testimony.

28. From November 21 until November 24, 1986, Attorney General Meese interviewed some of the United States Government officials who had known about the Iran initiative. One of the central topics in these interviews was the extent

of knowledge of United States Government officials of the November 1985 HAWK missile shipment from Israel to Iran.

29. On Sunday, November 23, 1986, Prince Bandar bin Sultan, the Saudi Arabian Ambassador to the United States, met with the defendant, CASPAR W. WEINBERGER. Prince Bandar told the defendant, CASPAR W. WEINBERGER, that during a recent meeting with President Reagan's wife, Nancy Reagan, she had said that she thought Secretary Shultz had been disloyal to the President during the crisis resulting from the revelation of the Iran initiative and that he should be replaced as Secretary of State. Prince Bandar reported that he had then proposed to Mrs. Reagan that the defendant, CASPAR W. WEINBERGER, replace Secretary Shultz, and that Mrs. Reagan had commented favorably on that proposal.

30. On November 24, 1986, Attorney General Meese met at the White House with President Reagan, Vice President Bush, Secretary Shultz, Director Casey, Chief of Staff Regan, Admiral Poindexter and the defendant, CASPAR W. WEINBERGER. Mr. Meese told the group that the November 1985 Israeli HAWK missile shipment may have been illegal, but that the President did not know about the shipment at the time. At the end of the meeting, Mr. Meese asked whether anyone knew of anything else that had not been revealed. No one contradicted Mr. Meese's incorrect statement concerning President Reagan's lack of knowledge, although several of

those present, including the defendant, CASPAR W. WEINBERGER, had contrary information.

31. On November 25, 1986, Attorney General Meese announced at a press conference that proceeds generated from mark-ups in the sales of arms to Iran had been diverted to the Nicaraguan democratic resistance, also known as the Contras. In response to a question about the Iran initiative, Mr. Meese said that the President had not been informed about the November 1985 HAWK missile shipment until February 1986.

32. Following the November 25, 1986 press conference, several Congressional Committees conducted investigations and held hearings on these topics.

33. On December 17, 1986, the defendant, CASPAR W. WEINBERGER, testified about the Iran initiative in closed session before the United States Senate Select Committee on Intelligence. With regard to the November 1985 Israeli HAWK missile shipment to Iran, the defendant, CASPAR W. WEINBERGER, testified as follows:

> Q. In the period of time from approximately November 16th to November 21st of 1985, the President was in Geneva for the summit meeting with Mr. Gorbachev. And at or about that same time, one of the arms transfers to the Iranians was under way and there is some evidence that there was discussions [sic] at various highest levels relative to that. Do you have any reason to recollect being aware at that particular point in time of discussions?

A. No. I was not in Geneva at those meetings and I did not have any recollection of that. I know that may have been about the time I saw one of these first [intelligence reports] that I mentioned to you earlier. But that was all -- my impression was that the plan was not being put forward actively, was no longer being considered. And this was confirmed in my view in the President's reaction at the December 6th [sic -- December 7] meeting that I have mentioned.

* * *

A. . . . And certainly there was no discussion in that meeting [December 7, 1985] of any transfers that Israel or anybody else had been permitted to make or anything of that kind.

34. For many years, the defendant, CASPAR W. WEINBERGER, took daily notes of his activities. These handwritten notes contain an extensive record of what the defendant, CASPAR W. WEINBERGER, did on a daily basis, and include summaries of telephone conversations and meetings. During 1985 and 1986, the defendant, CASPAR W. WEINBERGER, took nearly 1,700 pages of daily notes. These daily notes contain, among other things, summaries of conversations and meetings described in paragraphs 7-11, 13, 15-17 and 29 of this Count of the Indictment. These notes disclose that in November 1985, in advance of the HAWK missile shipment to Iran, the defendant, CASPAR W. WEINBERGER, was told that President Reagan had authorized the shipment of HAWK missiles

to Iran, through the Israelis, in order to obtain the release of American hostages held in Lebanon.

35. During 1985 and 1986 the defendant, CASPAR W. WEINBERGER, also took hundreds of pages of notes during high-level meetings, in addition to the daily notes described in the preceding paragraph. These meeting notes contain, among other things, a record of what occurred at meetings described in paragraphs 15-17, 22, 23 and 30 of this Count of the Indictment. These meeting notes show that, a few days after the November 1985 HAWK missile shipment, the defendant, CASPAR W. WEINBERGER, informed President Reagan that such arms shipments were illegal, and that one year later, during the meeting of November 24, 1986 described in paragraph 30 above, Attorney General Meese expressed concern that the November 1985 shipment was illegal.

36. On January 6, 1987, the United States Senate, by Senate Resolution 23, established the Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition ("Senate Select Committee"). On January 7, 1987, the United States House of Representatives, by House Resolution 12, established the Select Committee to Investigate Covert Arms Transactions with Iran ("House Select Committee"). The two Chambers instructed their respective Committees (collectively, "Select Committees") to work together and charged them with investigating, among other

things, any activity of any officer or entity of the United States Government relating to the Iran initiative.

37. On March 11, 1987, the defendant, CASPAR W. WEINBERGER, met with counsel to the Senate Select Committee and DoD General Counsel H. Lawrence Garrett, III. A Senate Select Committee staff memorandum prepared following the meeting states, in relevant part:

> Weinberger offered that some of his recollections of these matters were a bit fuzzy, and added "I have the deepest sympathy for the President's memory problem." He then added that he "should have done what Henry Kissinger did after every meeting, he would dictate a thorough memo of what transpired, which was used in writing his memoirs. For me, after I finish a meeting, I go off to another meeting." While Weinberger did not expressly deny that he kept diaries or dictated his thoughts about a day's events, with these comments he clearly left the impression that he did not make such notes or recordings.

38. On or about April 4, 1987, the Senate Select Committee requested that the DoD produce to it all documents relating to the Iran initiative, including "notes, ... diaries, ... or other such records, of attendance at, recollection of, or participation in, ... any meetings, discussions, conferences, or events pertaining to the Committee's inquiry, prepared by and/or in the possession of" certain individuals, including the defendant, CASPAR W. WEINBERGER.

39. On or about April 14, 1987, the House Select Committee requested that the DoD produce to it all documents

relating to the Iran initiative, including "calendars, logs, diaries, appointment books, records of meetings, and handwritten notes kept by or on behalf of" certain individuals, including the defendant, CASPAR W. WEINBERGER.

40. The defendant, CASPAR W. WEINBERGER, ordered the DoD Office of General Counsel to produce to the Select Committees documents responsive to the requests of the Select Committees. The defendant, CASPAR W. WEINBERGER, instructed senior officials in the DoD to comply with the requests, but withheld and concealed his daily notes and, with one exception, his relevant meeting notes. As a result, none of the defendant's, CASPAR W. WEINBERGER's, daily notes and only one of his relevant meeting notes were provided to the Select Committees.

41. On June 17, 1987, members of the Select Committees' staffs took deposition testimony under oath from the defendant, CASPAR W. WEINBERGER, in his office at the Pentagon. DoD General Counsel Garrett and DoD Assistant General Counsel Edward J. Shapiro also attended the deposition. One of the purposes of the questioning was to determine whether the defendant, CASPAR W. WEINBERGER, had kept notes. During the deposition, the defendant, CASPAR W. WEINBERGER, concealed the existence of his daily notes and the extent of notes he had taken during meetings in 1985 and 1986.

42. Pursuant to House Resolution 12, which established the House Select Committee, the June 17, 1987 deposition is deemed to have been taken in the District of Columbia.

43. During the June 17, 1987 deposition, the defendant, CASPAR W. WEINBERGER, made the following statements:

> Q. We have gone over a number of meetings?
>
> A. Yes.
>
> Q. Of course, your recollection is better on some and fainter on others.
>
> A. Yes.
>
> Q. Is there any way that you have of making a record of the highlights of meetings of this nature?
>
> A. Now?
>
> Q. No, then.
>
> A. No. There wasn't. I did dictate a memorandum on this particular one [referring to a November 10, 1986 meeting], but I've often said that I understand that Henry Kissinger made a memo of every meeting he ever attended and that enabled him to write his book rapidly. I wish I had done that with day one of the administration. I am usually getting ready for the next meeting and don't have time to write these memorandums. I took notes about this one and dictated this memorandum because it seemed to be important.

Q. Do you ever take notes that are not dictated or make jottings when you get back?

A. Yes, occasionally, but comparatively rarely. I don't know we kept those in any formal way. I don't think they have been filed or labeled. My handwriting is notoriously bad. I have trouble even reading it myself. Occasionally take a few notes, but not really very often.

Q. If there is any chance there are --

A. I think we made this examination and whatever there is is in our so-called C&D, Correspondence and Directives. They have been asked to paw through everything.

* * *

Q. Are you aware of any other potential source of -- that might be -- have made a record that might supplement your memory of some of these meetings?

A. Well, I don't really think of anything. We could paw through everything again. We have done that, I think, pretty well.

44. Thereafter, until he left the DoD, the defendant, CASPAR W. WEINBERGER, withheld the aforementioned notes. Thereafter, he deposited these notes in the Library of Congress in the District of Columbia, where public access to the notes was subject to his exclusive personal control.

45. It was material to the Select Committees' investigations to obtain any written materials, including contemporaneous notes, of the defendant, CASPAR W. WEINBERGER, that contained information relating to what the

President and other senior government officials had known or done in connection with proposals to ship arms to Iran in 1985, contributions to the Contras, and other topics within the scope of the investigation of the Select Committees.

THE GRAND JURY CHARGES:

46. From on or about March 11, 1987, up to and including August 3, 1987, the defendant, CASPAR W. WEINBERGER, acting unlawfully, willfully and knowingly did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due and proper exercise of the power of inquiry of the Select Committees in that, during the aforesaid time period, he caused the DoD not to provide to the Select Committees, in response to their document requests, handwritten notes relating to the Iran initiative and support for the Contras, by

a. withholding his daily notes and all but one of his relevant meeting notes from the Select Committees, and

b. concealing from the Select Committees the existence of these notes while professing to comply with the document requests of the Select Committees,

all with the intent to corruptly influence, obstruct and impede the due and proper exercise of the power of inquiry of the Select Committees.

(In Violation of Title 18, United States Code, Section 1505.)

COUNT II
(False Statement)

1. Paragraphs 1 through 45 of Count I of this Indictment are realleged and incorporated by reference.

2. At all times relevant to this Indictment, the Contras were insurgents engaged in military and paramilitary operations in Nicaragua.

3. From in or about December 1981 until on or about October 11, 1984, the United States Government, acting principally through the CIA, pursuant to written Presidential Findings, had provided the Contras with financial support, arms and military equipment, as well as with supervision and instruction, tactical and other advice, coordination, intelligence and direction.

4. On October 12, 1984, Public Law 98-473 was enacted. It prohibited funds available to the CIA, the DoD, and certain other agencies and entities of the United States from being obligated or expended in support of military or paramilitary operations in Nicaragua, stating in relevant part:

> During fiscal year 1985 no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

This provision of law was commonly known as the Boland Amendment.

5. On or about March 13, 1985, General John W. Vessey, Chairman of the Joint Chiefs of Staff, informed the defendant, CASPAR W. WEINBERGER, that Prince Bandar bin Sultan, the Saudi Arabian Ambassador to the United States, had stated that Saudi Arabia was contributing funds to the Contras. The defendant, CASPAR W. WEINBERGER, repeated this information to Mr. McFarlane.

6. On or about March 15, 1985, the defendant, CASPAR W. WEINBERGER, informed Director of Central Intelligence Casey and Deputy Director of Central Intelligence McMahon that he had heard that Prince Bandar had earmarked $25 million for the Contras, in $5 million increments.

7. During the summer of 1986, reports appeared in the press alleging that the Saudis had contributed money to the Contras as part of an informal arrangement connected with the sale of AWACs aircraft to Saudi Arabia. A July 27, 1986 article in the San Francisco Examiner cited intelligence sources who stated that the Saudi contribution "was but the latest example of a longstanding practice of financing U.S. covert operations with money set aside from foreign military sales." By letter dated August 12, 1986, Representative Dante B. Fascell, Chairman of the United States House of Representatives Committee on Foreign Affairs, sent a copy of

the San Francisco Examiner article to the defendant, CASPAR W. WEINBERGER, and asked him to respond to these allegations.

8. The defendant, CASPAR W. WEINBERGER, responded to Congressman Fascell in a letter dated September 4, 1986, which began as follows:

> I am pleased to have the opportunity to respond to your letter of August 12, in which you raise a number of important questions regarding alleged funding of Contra aid through the Foreign Military Sales system. I, too, saw the San Francisco Examiner article and regarded the allegation of Saudi funding of U.S. assistance to anti-government forces in Nicaragua as so outlandish as to be unworthy of comment from the Department.

THE GRAND JURY CHARGES:

9. On June 17, 1987, in a deposition deemed to have been taken in the District of Columbia, the defendant, CASPAR W. WEINBERGER, unlawfully, knowingly and willfully made a material false, fictitious and fraudulent statement to a department or agency of the United States, to wit, the House Select Committee, in a matter within its jurisdiction, to wit, its investigation of the Iran initiative and certain aspects of assistance for the Contras.

10. It was material to the House Select Committee's investigation to determine what the defendant, CASPAR W. WEINBERGER, had known about Saudi Arabian contributions to the Contras.

11. On June 17, 1987, the defendant, CASPAR W. WEINBERGER, appearing as a witness before duly authorized

staff of the House Select Committee, made the following statement, knowing it to be false, fictitious and fraudulent:

> Q. Do you recall learning at some point that the Saudis or some people connected with the Saudis provided funds for the contras?
>
> A. No. I don't have any memory of any contra funding or of anything connected with the Saudis that I can remember now.

12. The above underscored material statement made to the duly authorized staff of the House Select Committee by the defendant, CASPAR W. WEINBERGER, was false, fictitious and fraudulent, as the defendant, CASPAR W. WEINBERGER, then and there well knew, in that he had been informed in March 1985 that the Saudi Ambassador was contributing funds to the Contras.

(In Violation of Title 18, United States Code, Section 1001.)

COUNT III
(Perjury)

THE GRAND JURY CHARGES:

1. Paragraphs 1 through 45 of Count I of this Indictment are realleged and incorporated by reference.

2. On July 31, 1987, in the District of Columbia, the defendant, CASPAR W. WEINBERGER, having duly taken an oath before competent tribunals, to wit, the Select Committees, in a case in which the law of the United States authorizes an oath to be administered, that he would testify truthfully in proceedings before the Select Committees, did willfully and contrary to said oath make a material statement that he did not believe to be true, as hereinafter set forth.

3. It was material to the Select Committees' investigation to determine whether the President and other high-level United States Government officials, including the defendant, CASPAR W. WEINBERGER, knew in November 1985 of a proposed transfer of HAWK missiles from Israel to Iran.

4. At the time and place set forth in paragraph 2 of this Count, the defendant, CASPAR W. WEINBERGER, appearing as a witness under oath before the Select Committees, was asked the following question and gave the following answer, believing the underscored material declaration not to be true:

> Mr. Eggleston: The Committee has also received testimony that on that weekend of November 23 and November 24, [1985] there was a shipment of 18 HAWK missiles from Israel to Iran. This [Exhibit 8]

Israelis were sending. Did you know that replenishment was an issue?

Secretary WEINBERGER: No. I have no memory of that.

5. The above underscored material declaration made under oath before the Select Committees by the defendant, CASPAR W. WEINBERGER, was not true, as the defendant, CASPAR W. WEINBERGER, then and there well knew, in that:

a. he had in November 1985 ascertained the availability of HAWK missiles with which to supply Israel;

b. he had been informed by Mr. McFarlane, on or about November 20, 1985, that President Reagan had decided to provide HAWK missiles to Iran through Israel; and

c. he had been informed, on or before December 10, 1985, that the United States Government still had to replenish 500 TOW missiles to Israel that Israel previously had transferred to Iran.

(In Violation of Title 18, United States Code, Section 1621.)

COUNT V
(False Statement)

THE GRAND JURY CHARGES:

1. Paragraphs 1 through 45 of Count I of this Indictment are realleged and incorporated by reference.

2. On December 19, 1986, the United States Court of Appeals for the District of Columbia Circuit, Division For the Purpose of Appointing Independent Counsels, appointed Lawrence E. Walsh Independent Counsel with jurisdiction to investigate possible federal criminal violations by United States Government officials "relating in any way" to the Iran initiative and support for the Contras.

3. In or about December 1986, the Independent Counsel was assigned Federal Bureau of Investigation ("FBI") personnel to assist the Independent Counsel in his investigation. Since that time the Independent Counsel and his staff ("Office of Independent Counsel" or "OIC") have interviewed numerous witnesses in connection with his investigation. Such interviews are conducted in the presence of a Special Agent of the FBI who takes contemporaneous notes of the interview and later prepares a report of the witness's statements.

4. On October 10, 1990, members of the Independent Counsel's staff and a Special Agent of the FBI interviewed the defendant, CASPAR W. WEINBERGER, in the District of Columbia. During this interview, the defendant, CASPAR W. WEINBERGER, unlawfully, willfully and knowingly

made material false, fictitious and fraudulent statements to a department or agency of the United States, to wit, the Office of Independent Counsel, in a matter within its jurisdiction, to wit, an investigation into possible violations of federal criminal law relating to the Iran initiative and support for the Contras.

5. It was material to the Independent Counsel's investigation to determine what written materials the defendant, CASPAR W. WEINBERGER, had created that might contain evidence relating to the Iran initiative and support for the Contras.

6. On October 10, 1990, the defendant, CASPAR W. WEINBERGER, in an interview with members of the Independent Counsel's staff and a Special Agent of the FBI, made the following statements, as recorded in the Special Agent's report of the interview, knowing the underscored material statements to be false, fictitious and fraudulent:

> Weinberger stated he had some disagreements with the April, 1988, 302 [the Special Agent's written report of the April 1988 interview]. His first disagreement concerned the sentence on page 2 that stated "He (Weinberger) had a habit of making notes on any piece of paper he could get his hands on." <u>Weinberger stated this sentence is misleading because it infers that it was his habit to make notes throughout his seven years as Secretary of Defense, which was not the case.</u>
>
> * * *
>
> Weinberger advised that during his first year as Secretary of Defense, from

approximately 1981 through 1982, he tried to take some notes when he attended various high-level meetings. Often he would write on the back of pages in the briefing books that were furnished to him for the meetings. At the end of the meeting, he would turn the books in to his staff and they were broken apart so they could reuse the covers.

Weinberger advised that his secretary, Kay Leisz, used to save his notes from these briefing book pages because Weinberger had told her that he wanted to dictate memoranda of the meetings based on them. After about a year, Leisz came up to Weinberger and said, "You're never really gonna dictate from these notes are you?" Weinberger agreed that he was too busy to dictate memoranda from these notes and he gave Leisz permission to discard them. From this point on, Weinberger rarely took notes, and when he did, Leisz never saved them for him, except for rare occasions.

According to Weinberger, after his first year as Secretary of Defense, he did not, as a rule, take any notes when he met with the President or other cabinet members. Weinberger stated that it would have been in "bad form" to take notes when having a private or relatively private discussion with other high-ranking Administration officials. No other cabinet member did so either, as far as Weinberger is aware. Weinberger specifically recalls not taking any notes during his few meetings with the President and other cabinet members when the Iranian arms sales matter was discussed. No notes were taken by any participant of these meetings, as far as Weinberger is aware.

* * *

Weinberger was asked which notes or documents he consulted to prepare himself for his testimony concerning the Iran/Contra matter before the Congressional Committees. Weinberger

stated he only would have used his notes taken at the November, 1986, Meese briefing, and a copy of the McFarlane memorandum with his marginalia on it. Weinberger is not aware of anything else he could have consulted.

* * *

After meetings, Weinberger did not go back to the Pentagon and make a record of the meeting he had just attended, nor did he designate others to do so.

* * *

Weinberger stated he did not take notes of his phone conversations.

* * *

AC [Associate Counsel] Gillen advised Weinberger that the OIC [Office of Independent Counsel] has a document, contemporaneously written by someone Weinberger would consider credible, which alleges that Weinberger has withheld some of his notes concerning the Iran/Contra matter. Gillen would not identify the author of the document or further describe the document.

Weinberger responded that the allegation is not true and he is distrustful of the document's author and his motivations. Weinberger stated that at an early cabinet meeting, President Reagan instructed everyone to give everything they had to the various investigators, and Weinberger had always followed these instructions. Weinberger stated he is not aware of any of his notes regarding Iran/Contra that have not been turned over. Weinberger stated there may be some oversight at DoD or elsewhere concerning the document production, but he has not deliberately withheld anything. Weinberger reiterated that he always instructed his staff and others at DoD to turn over all notes and documents when requested.

7. The above material statements made to a Special Agent of the FBI by the defendant, CASPAR W. WEINBERGER, in the presence of members of the Independent Counsel's staff were false, fictitious and fraudulent, as the defendant, CASPAR W. WEINBERGER, then and there well knew, in that:

a. he had, for years, including nearly seven years as Secretary of Defense, regularly taken daily notes of his meetings and telephone conversations;

b. he had, as Secretary of Defense, taken notes during meetings with the President and other high officials, including meetings related to the Iranian arms sales matter, that contained a record of what occurred at those meetings;

c. he had extensive notes that had never been provided to the Independent Counsel or the Select Committees; and

d. these notes contained information relevant to the Independent Counsel's investigation.

(In Violation of Title 18, United States Code, Section 1001.)

- 30 -

A TRUE BILL:

Jack F. Blalock

Foreperson

June 16, 1992

Date

Lawrence E. Walsh
Independent Counsel

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury 91-1 Sworn in on January 16, 1991

UNITED STATES OF AMERICA	:	Criminal No. 92- 0416
v.	:	
CASPAR W. WEINBERGER,	:	Grand Jury Original
Defendant.	:	
	:	Violation: Title 18 U.S.C. § 1001 (False Statements)

HOGAN, J.

FILED IN OPEN COURT
OCT 30 1992
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

INDICTMENT

Case Related To CR 92-235

COUNT I
(False Statements)

The Defendant

1. From 1981 to November 1987, the defendant, CASPAR W. WEINBERGER, was the Secretary of Defense and a statutory member of the National Security Council ("NSC").

2. At all times relevant to this Indictment, the Secretary of Defense was the head of the Department of Defense ("DoD").

3. At all times relevant to this Indictment, the NSC was a government entity established by the National Security Act of 1947, whose statutory members were the President of the United States, the Vice President, the Secretary of State and the Secretary of Defense.

4. At all times relevant to this Indictment, the defendant, CASPAR W. WEINBERGER, as a statutory member of the NSC, advised President Ronald Reagan on the integration of domestic, foreign and military policies relating to the national security; facilitated cooperation among the military services and other departments and agencies of the government in matters involving the national security; and reviewed, guided and directed foreign intelligence and covert action activities.

The Defendant's Handwritten Notes

5. For many years, the defendant, CASPAR W. WEINBERGER, took daily notes of his activities. These handwritten daily notes contain an extensive record of what the defendant, CASPAR W. WEINBERGER, did on a daily basis,

and include summaries of telephone conversations and meetings. During 1985 and 1986, the defendant, CASPAR W. WEINBERGER, took nearly 1,700 pages of daily notes.

6. During 1985 and 1986 the defendant, CASPAR W. WEINBERGER, also took hundreds of pages of meeting notes during high-level meetings, in addition to the daily notes described in the preceding paragraph.

7. After he left the DoD, the defendant, CASPAR W. WEINBERGER, deposited these notes in the Library of Congress in the District of Columbia, where public access to the notes was subject to his exclusive personal control.

The Iran Initiative

8. Beginning with the overthrow of the Shah of Iran on or about January 16, 1979, and the seizure of the United States Embassy in Iran and its staff on November 4, 1979, relations between the United States Government and the Government of Iran were characterized by mutual hostility and tension. At all times relevant to this Indictment, the United States Government embargoed arms sales to Iran. In January 1984, Secretary of State George P. Shultz designated Iran as a sponsor of international terrorism and, thereafter, the United States Government actively urged its allies not to permit the shipment of arms to Iran.

9. In August 1985, Robert C. McFarlane, the Assistant to the President for National Security Affairs, briefed President Ronald Reagan, Secretary Shultz, and the

defendant, CASPAR W. WEINBERGER, about an Israeli proposal to sell arms to Iran to obtain the release of Americans held hostage in Lebanon. This plan and subsequent efforts to obtain the release of the hostages through the sale of arms to Iran became known as the Iran initiative.

10. In August and September of 1985, Israel shipped 508 United States-supplied TOW anti-tank missiles to Iran. Following these Israeli TOW shipments to Iran, the Reverend Benjamin Weir, an American held hostage in Lebanon, was released from captivity.

11. On Saturday, November 9, 1985, the defendant, CASPAR W. WEINBERGER, spoke with Mr. McFarlane. The defendant, CASPAR W. WEINBERGER, made the following handwritten entry in his daily notes:

> Bud McFarlane ... wants to start "negot." exploration with Iranians (+ Israelis) to give Iranians weapons for our hostages - I objected - we'll talk later on secure.

12. On Sunday, November 10, 1985, the defendant, CASPAR W. WEINBERGER, again spoke with Mr. McFarlane. The defendant, CASPAR W. WEINBERGER, made the following handwritten entry in his daily notes:

> Bud McFarlane ... - negotiations are with 3 Iranian dissidents who say they want to overthrow government. We'll demand release of all hostages. Then we might give them - thru Israelis - Hawks but no Phoenix.

13. On Tuesday, November 19, 1985, the defendant, CASPAR W. WEINBERGER, again spoke with Mr. McFarlane. The

defendant, CASPAR W. WEINBERGER, made the following handwritten entry in his daily notes:

> Bud McFarlane fm Geneva - update on meetings - all OK so far - Also wants us to try to get 500 Hawks for sale to Israel to pass on to Iran for release of 5 hostages Thurs.

14. Later that day, Major General Colin L. Powell, the Senior Military Assistant to the defendant, CASPAR W. WEINBERGER, spoke with him. The defendant, CASPAR W. WEINBERGER, made the following handwritten entry in his daily notes:

> Colin Powell in office re data on Hawks - can't be given to Israel or Iran w/o Cong. notification, - breaking them up into several packages of 28 Hawks to keep each package under $14 million is a clear violation

15. The defendant, CASPAR W. WEINBERGER, then spoke with Mr. McFarlane. The defendant, CASPAR W. WEINBERGER, made the following handwritten entry in his daily notes:

> Called McFarlane in Geneva - re above - he "thanks me for call" -

16. On Wednesday, November 20, 1985, the defendant, CASPAR W. WEINBERGER, spoke with Mr. McFarlane. The defendant, CASPAR W. WEINBERGER, made the following handwritten entry in his daily notes:

> Bud McFarlane rmc. fm Geneva (2) - he hasn't heard of request for logistical support for hostages - return - Told him we shouldn't pay Iranian anything - he sd President has decided to do it thru Israelis.

17. Later that day, the defendant, CASPAR W. WEINBERGER, again spoke with Mr. McFarlane. The defendant, CASPAR W. WEINBERGER, made the following handwritten entry in his daily notes:

> Bud McFarlane fm Geneva - working on broad agreement language - Israelis will sell 120 Hawks, older models to Iranians - Friday release

18. On or about Sunday, November 24, 1985, a cargo of 18 HAWK missiles was sent from Israel to Iran.

19. On Saturday, December 7, 1985, the defendant, CASPAR W. WEINBERGER, attended a meeting at the White House with President Reagan, Chief of Staff to the President Donald T. Regan, Secretary Shultz, Deputy Director of Central Intelligence John N. McMahon, newly-appointed Assistant to the President for National Security Affairs Vice Admiral John M. Poindexter, and Mr. McFarlane, who recently had resigned his position as Assistant to the President for National Security Affairs. The defendant, CASPAR W. WEINBERGER, made the following handwritten entry in his daily notes:

> Met with President, Shultz, Don Regan, John McMahon, McFarlane, John Poindexter - in Upstairs residence of WH (end of corridor sitting room) - re NSC Iran proposal. President wants to free hostages. Thinks Hawks + TOWs would only go to "moderate elements in Army" + would help overthrow Iranian gov't. I argued strongly that we have an embargo that makes arms sales to Iran illegal + President couldn't violate it - + that "washing" transaction thru Israel wouldn't make it legal. Shultz, Don Regan agreed. President sd. he could answer charges of illegality but he

couldn't answer charge that "big strong President Reagan passed up a chance to free hostages". President left to do his noon radio.

20. On December 10, 1985, the defendant, CASPAR W. WEINBERGER, attended a meeting at the White House with President Reagan, Chief of Staff Regan, Director of Central Intelligence William J. Casey, Admiral Poindexter, and Mr. McFarlane. The defendant, CASPAR W. WEINBERGER, made two pages of handwritten meeting notes, including the following:

Bud

...

We still must replace 500 TOWs to Israel

The defendant, CASPAR W. WEINBERGER, also made the following handwritten entry in his daily notes:

Met with President[,] John Poindexter, McFarlane, Bill Casey - in Oval Office - McFarlane recommends that we not continue to deal with Iranians for hostage release - but try to get more reliable Iranians who will help overthrow government - but not link any of it to hostage release - President still wants to try to get hostage released. But forcible storming would mean many deaths -

21. On January 6, 1986, the defendant, CASPAR W. WEINBERGER, met with Admiral Poindexter. The defendant, CASPAR W. WEINBERGER, made handwritten meeting notes. He also made the following handwritten entry in his daily notes:

John Poindexter in office. Another Israeli-Iranian scheme offering freedom to hostages in return for TOW missiles. Told him I opposed it.

22. On January 7, 1986, the defendant, CASPAR W. WEINBERGER, attended a meeting at the White House with

President Reagan, Vice President George Bush, Attorney General Edwin Meese, III, Director Casey and Secretary Shultz. The defendant, CASPAR W. WEINBERGER, made the following handwritten entry in his daily notes:

> Met with President, Shultz, Poindexter, Bill Casey, Ed Meese, in Oval Office. President decided to go with Israeli-Iranian offer to release our 5 hostages in return for sale of 4000 TOWs to Iran by Israel - George Shultz + I opposed - Bill Casey, Ed Meese + VP favored - as did Poindexter.

23. On January 17, 1986, President Reagan formally approved, by Presidential Finding, a covert plan in which the United States would sell weapons to Iran through an American intermediary, rather than through Israel.

24. In furtherance of this plan, during February 1986, 1,000 TOW missiles were sold to Iran.

25. Between May and November 1986, additional weapons and replacement parts for weapons were sold to Iran, and two Americans held hostage in Lebanon were released.

26. In early November 1986, there were public reports that United States Government officials had engaged in arms-for-hostages deals with Iran.

27. On November 10, 1986, the defendant, CASPAR W. WEINBERGER, attended a White House meeting with President Reagan, Vice President Bush, Secretary Shultz, Attorney General Meese, Director Casey, Chief of Staff Regan, Admiral Poindexter, and Acting Deputy Assistant to the President for National Security Affairs Alton G. Keel, Jr. Admiral

Poindexter briefed the meeting about operational details of the Iran initiative, but he omitted mention of the November 1985 HAWK missile shipment and did not acknowledge any United States role in or approval of any shipments prior to the Presidential Finding of January 17, 1986. The defendant, CASPAR W. WEINBERGER, took five pages of handwritten meeting notes. He also made the following handwritten entry in his daily notes:

> Met with President in Oval Office.
> Shultz, V.P., Don Regan, John Poindexter,
> Bill Casey, Al Kheel [sic -- Keel]. (see
> separate memo)

28. On November 12, 1986, the defendant, CASPAR W. WEINBERGER, attended a briefing for Congressional leaders at the White House with the same officials who attended the November 10, 1986 meeting. Admiral Poindexter briefed the Congressional leaders about the Iran initiative but, once again, did not acknowledge any United States role in or approval of any 1985 shipments, including the November 1985 HAWK missile shipment. In response to a question by Senate Minority Leader Robert C. Byrd, Admiral Poindexter stated that the initial contacts with the Iranians had been in 1985 but there had been no transfer of material to Iran then because it took time to assess the contacts and issue a Finding. The defendant, CASPAR W. WEINBERGER, took sixteen pages of handwritten meeting notes. He also made the following handwritten entry in his daily notes:

> Attended WH Sit Rm meeting - with President, VP, Shultz, Ed Meese, Poindexter - Sen Byrd, Jim Wright, Bob Dole, Dick Cheyney [sic -- Cheney] - (see separate memo)

29. On November 13, 1986, President Reagan addressed the nation about the Iran initiative.

30. On November 19, 1986, President Reagan held a news conference about the Iran initiative.

31. On Sunday, November 23, 1986, the defendant, CASPAR W. WEINBERGER, met with Prince Bandar bin Sultan, the Saudi Arabian Ambassador to the United States. The defendant, CASPAR W. WEINBERGER, made the following handwritten note:

> Prince Bandar in office - Nancy Reagan - in a 1½ hr. talk Friday with him - he invited President to dinner at his Embassy - sd she thinks Shultz should go - that he has been disloyal to the President - he sd he recommended to her that I be named Secretary of State; that I could negotiate an agreement with Soviets because no one could say I was soft on them - She feels that very few are being loyal to the President + that Shultz should not have gone to Canada Friday + should support President - She would like Baker to go in as Secretary of Defense!

32. On November 24, 1986, the defendant, CASPAR W. WEINBERGER, met at the White House with President Reagan, Vice President Bush, Secretary Shultz, Director Casey, Chief of Staff Regan, Admiral Poindexter and Attorney General Meese. Mr. Meese told the group that the November 1985 Israeli HAWK missile shipment may have been illegal, but that

the President did not know about the shipment at the time. The defendant, CASPAR W. WEINBERGER, took twenty pages of handwritten meeting notes. He also made a handwritten entry regarding the meeting in his daily notes.

33. On November 25, 1986, Attorney General Meese announced at a press conference that proceeds generated from mark-ups in the sales of arms to Iran had been diverted to the Nicaraguan democratic resistance, also known as the Contras.

Congressional Investigations

34. Following the November 25, 1986 press conference, several Congressional Committees conducted investigations and held hearings on these topics.

35. On December 17, 1986, the defendant, CASPAR W. WEINBERGER, testified about the Iran initiative in closed session before the United States Senate Select Committee on Intelligence. With regard to the November 1985 Israeli HAWK missile shipment to Iran, the defendant, CASPAR W. WEINBERGER, testified as follows:

> Q. In the period of time from approximately November 16th to November 21st of 1985, the President was in Geneva for the summit meeting with Mr. Gorbachev. And at or about that same time, one of the arms transfers to the Iranians was under way and there is some evidence that there was discussions [sic] at various highest levels relative to that. Do you have any reason to recollect being aware at that particular point in time of discussions?

A. No. I was not in Geneva at those meetings and I did not have any recollection of that. I know that may have been about the time I saw one of these first [intelligence reports] that I mentioned to you earlier. But that was all -- my impression was that the plan was not being put forward actively, was no longer being considered. And this was confirmed in my view in the President's reaction at the December 6th [sic -- December 7] meeting that I have mentioned.

36. On January 6, 1987, the United States Senate, by Senate Resolution 23, established the Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition ("Senate Select Committee"). On January 7, 1987, the United States House of Representatives, by House Resolution 12, established the Select Committee to Investigate Covert Arms Transactions with Iran ("House Select Committee"). The two Chambers instructed their respective Committees (collectively, "Select Committees") to work together and charged them with investigating, among other things, any activity of any officer or entity of the United States Government relating to the Iran initiative.

37. On March 11, 1987, the defendant, CASPAR W. WEINBERGER, met with counsel to the Senate Select Committee. A Senate Select Committee staff memorandum prepared following the meeting states, in relevant part:

> Weinberger offered that some of his recollections of these matters were a bit fuzzy, and added "I have the deepest sympathy for the President's memory problem." He then added that he "should

> have done what Henry Kissinger did after every meeting, he would dictate a thorough memo of what transpired, which was used in writing his memoirs. For me, after I finish a meeting, I go off to another meeting." While Weinberger did not expressly deny that he kept diaries or dictated his thoughts about a day's events, with these comments he clearly left the impression that he did not make such notes or recordings.

38. On or about April 4, 1987, the Senate Select Committee requested that the DoD produce to it all documents relating to the Iran initiative, including "notes, ... diaries, ... or other such records, of attendance at, recollection of, or participation in, ... any meetings, discussions, conferences, or events pertaining to the Committee's inquiry, prepared by and/or in the possession of" certain individuals, including the defendant, CASPAR W. WEINBERGER.

39. On or about April 13, 1987, the House Select Committee requested that the DoD produce to it all documents relating to the Iran initiative, including "calendars, logs, diaries, appointment books, records of meetings and handwritten notes kept by or on behalf of" certain individuals, including the defendant, CASPAR W. WEINBERGER.

40. The defendant, CASPAR W. WEINBERGER, never produced to the Select Committees his daily notes or many of his relevant meeting notes.

41. On June 17, 1987, members of the Select Committees' staffs took deposition testimony under oath from

the defendant, CASPAR W. WEINBERGER, in his office at the Pentagon.

42. Pursuant to House Resolution 12, which established the House Select Committee, the June 17, 1987 deposition is deemed to have been taken in the District of Columbia.

THE GRAND JURY CHARGES:

43. On June 17, 1987, in a deposition, the defendant, CASPAR W. WEINBERGER, unlawfully, knowingly and willfully made material false, fictitious and fraudulent statements to a department or agency of the United States, to wit, the House Select Committee, in a matter within its jurisdiction, to wit, its investigation of the Iran initiative and certain aspects of assistance for the Contras.

44. It was material to the House Select Committee's investigation to determine whether the defendant, CASPAR W. WEINBERGER, had any written materials, including contemporaneous notes, that contained information relating to what the President and other senior government officials had known or done in connection with proposals to ship arms to Iran in 1985, contributions to the Contras, and other topics within the scope of the investigation of the Select Committees.

45. On June 17, 1987, the defendant, CASPAR W. WEINBERGER, appearing as a witness before duly authorized staff of the House Select Committee, made the following

statements, knowing them to be false, fictitious and fraudulent:

Q. We have gone over a number of meetings?

A. Yes.

Q. Of course, your recollection is better on some and fainter on others.

A. Yes.

Q. Is there any way that you have of making a record of the highlights of meetings of this nature?

A. Now?

Q. No, then.

A. No. There wasn't. I did dictate a memorandum on this particular one [referring to a November 10, 1986 meeting], but I've often said that I understand that Henry Kissinger made a memo of every meeting he ever attended and that enabled him to write his book rapidly. I wish I had done that with day one of the administration. I am usually getting ready for the next meeting and don't have time to write these memorandums. I took notes about this one and dictated this memorandum because it seemed to be important.

Q. Do you ever take notes that are not dictated or make jottings when you get back?

A. Yes, occasionally, but comparatively rarely. I don't know we kept those in any formal way. I don't think they have been filed or labeled. My handwriting is notoriously bad. I have trouble even reading it myself. Occasionally take a few notes, but not really very often.

Q. If there is any chance there are --

A. I think we made this examination and whatever there is is in our so-called C&D, Correspondence and Directives. They have been asked to paw through everything.

* * *

Q. Are you aware of any other potential source of -- that might be -- have made a record that might supplement your memory of some of these meetings?

A. Well, I don't really think of anything. We could paw through everything again. We have done that, I think, pretty well.

46. The above underscored material statements made to the duly authorized staff of the House Select Committee by the defendant, CASPAR W. WEINBERGER, were false, fictitious and fraudulent, as the defendant, CASPAR W. WEINBERGER, then and there well knew, in that:

a. he had, for years, including nearly seven years as Secretary of Defense, regularly taken daily notes of his meetings and telephone conversations;

b. he had, as Secretary of Defense, taken notes during meetings with the President and other high officials, including meetings related to the Iranian arms sales matter, that contained a record of what occurred at those meetings;

c. he had extensive notes that had never been provided to the Select Committees;

d. his daily notes were not stored or deposited in the DoD's Correspondence & Directives (C&D) section; and

e. these notes contained information relevant to the Select Committees' investigation.

(In Violation of Title 18, United States Code, Section 1001.)

A TRUE BILL:

Frank H. Blalock
Foreperson

Lawrence E. Walsh
Lawrence E. Walsh
Independent Counsel

10/30/92
Date

Interim Reports to Congress

Independent Counsel for Iran/contra matters submitted four public Interim Reports to Congress. This reporting role was specifically envisioned in the law, 28 U.S.C. Section 595(a), which stated, "independent counsel . . . may make public from time to time, and shall send to the Congress statements or reports on the activities of such independent counsel. These statements and reports shall contain such information as such independent counsel deems appropriate."

The Interim Reports, which dealt with separate subject matters, were issued when Independent Counsel confronted unique circumstances that he believed required a full airing of the facts. They allowed Independent Counsel to explain publicly his position, particularly on issues whose significance transcended individual court cases.

The Interim Reports contained here are:

Immunity and Prosecution: A First Interim Report, issued on April 28, 1987, to warn against the possible consequences of the congressional Select Iran/contra Committees' decision to grant immunity to Lt. Col. Oliver L. North, Vice Adm. John M. Poindexter, and other potential defendants in future prosecutions. In this Interim Report, Independent Counsel described the progress of the criminal investigation and the steps the office had taken to speed its work and shield itself from exposure to the immunized testimony, which would be nationally televised and widely disseminated.

Second Interim Report to Congress by Independent Counsel for Iran/contra Matters, issued on December 11, 1989, outlining the problems of prosecuting public officials involved in national security activities. This Interim Report highlighted the dilemma that arises when the attorney general has the power, under the Classified Information Procedures Act (CIPA), to determine whether classified information will be disclosed or withheld in criminal cases brought by an Independent Counsel, whose appointment arises to avoid a possible conflict of interest if the attorney general had been the prosecutor. Included here following this Interim Report, which was submitted to Congress in both classified and unclassified form, are brief supplemental reports describing the October 1990 dismissal of the *United States* v. *Joseph F. Fernandez* case due to the Bush Administration's refusal to declassify certain information needed at trial.

Third Interim Report to Congress by Independent Counsel for Iran/contra Matters, submitted to Congress and made public on June 25, 1992, explaining the final phase of the criminal investigation to determine whether senior Reagan Administration officials sought to cover up legally questionable 1985 Iran arms shipments by lying, withholding documents and otherwise obstructing official inquiries. Following the indictment of former Defense Secretary Caspar W. Weinberger, the Office of Independent Counsel became the object of sharp political attack and public speculation regarding its ongoing investigation. This Interim Report gave Independent Counsel the opportunity to explain the importance of the final investigative phase, and to report that the late discovery of previously withheld documents required the requestioning of many witnesses who first testified in 1986 and 1987.

Fourth Interim Report to Congress by Lawrence E. Walsh, Independent Counsel for Iran/contra Matters, issued February 8, 1993, in response to President Bush's pardons of six

Iran/contra defendants, including Weinberger. In his pardon proclamation of December 24, 1992, President Bush described the Iran/contra prosecutions as the "criminalization of policy differences." In this Interim Report, Independent Counsel presented the evidence that Weinberger had committed the serious crimes of false statements and perjury, and reported that other Iran/contra defendants had been convicted of equally serious crimes.

IMMUNITY AND PROSECUTION: A FIRST INTERIM REPORT

The Independent Counsel statute provides that an "independent counsel appointed under this chapter may make public from time to time, and shall send to the Congress statements or reports on the activities of such independent counsel. These statements and reports shall contain such information as such independent counsel deems appropriate." 28 U.S.C. Section 595(a). On December 19, 1986, the Division for the Purpose of Appointing Independent Counsels of the United States Court of Appeals for the District of Columbia Circuit appointed Lawrence E. Walsh as Independent Counsel in the Iran/Contra matter. This submission represents his first interim report.

Under the governing statute, Independent Counsel's responsibilities are threefold. First, he has an investigative role. 28 U.S.C Section 594. Second, he has a prosecutorial role. 28 U.S.C. Section 594. Third, he has a reporting role. 28 U.S.C. Section 595.

As the Select Committees of the House and Senate prepare to begin their joint hearings on the Iran/Contra matter, it is an appropriate time for a first interim report.

The purpose of this report is: (1) to review the scope of Independent Counsel's investigation; (2) to explain the correlation between his investigation and that of the Congressional Committees; and (3) to analyze the problem of immunity.

Events Leading To
The Appointment Of
Independent Counsel

On Tuesday, November 25, 1986, President Reagan announced that the preceding Friday he had directed Attorney General Edwin Meese III to conduct a review of certain activities of the National Security Council with respect to Iran. Attorney General Meese then reported that it had been learned that some of the moneys paid by representatives of Iran for United States arms transferred to Iran had been deposited in bank accounts which were under the control of representatives of the Contras.

On Tuesday, December 2, 1986, the Attorney General announced that he had concluded that he should apply for the appointment of an Independent Counsel; that a possible conflict of interest might result if the Department of Justice continued the investigation; and that the national interest would be served by the appointment of an outside counsel. Two days later, he filed an application for this purpose with the Division for the Purpose of Appointing Independent Counsels of the United States Court of Appeals for the District of Columbia Circuit.

The Appointment Of
Independent Counsel

On December 19, 1986, the Division of the United States Court of Appeals filed an order appointing the present Independent Counsel. It directed the investigation of:

> "(1) the direct or indirect sale, shipment, or transfer since in or about 1984 down to the present, of military arms, materiel, or funds to the Government of

Iran, officials of that government, persons, organizations or entities connected with or purporting to represent that government, or persons located in Iran;

(2) the direct or indirect sale, shipment, or transfer of military arms, materiel or funds to any government, entity, or person acting, or purporting to act as an intermediary in any transaction above referred to in section (1);

(3) the financing or funding of any direct or indirect sale, shipment or transfer referred to in section (1) or (2);

(4) the diversion of the proceeds from any transaction described in section (1) or (2) to or for any person, organization, foreign government, or any faction or body of insurgents in any foreign country, including, but not limited to Nicaragua;

(5) the provision or coordination of support for persons or entities engaged as military insurgents in armed conflict with the Government of Nicaragua since 1984[.]"

Organization of
The Investigation

On December 19, 1986, William H. Webster, Director of the Federal Bureau of Investigation, assigned to Independent Counsel the group of FBI Special Agents already working on the Iran/Contra matter. By December 31, 1986, the first several Associate Counsel had been appointed and Chief Judge Aubrey E. Robinson, Jr. had assigned temporary space in the United States Courthouse. By early January, additional Associate Counsel were appointed and as security clearances were completed, teams were created -- based upon groupings of witnesses and records as well as subject matter. Later, several Special Agents were assigned by the Commissioner of Internal Revenue and Customs Agents were added. At present, there are 23 Associate Counsel,

35 Agents of the FBI, 11 Agents of the IRS, and 4 Customs Agents working on the investigation. The Office has finally obtained permanent quarters.

A grand jury was empaneled on January 28, 1987. It has been hearing testimony regularly two or three full days a week. In addition, 800 interviews have been conducted. Hundreds of boxes of documents from the White House and National Security Council have been examined, as well as approximately 200,000 pages of documents from the Central Intelligence Agency.

Ongoing investigations are presently being conducted at the White House, the Office of the Vice President, the National Security Council, the President's Intelligence Oversight Board, Department of Defense, Department of Justice, Department of State, Department of Transportation, Department of the Treasury, and the Central Intelligence Agency. Requests for documents and information have been addressed to thirteen foreign countries. Others are about to be added. The Swiss Government has supported Independent Counsel's application for certain records of Swiss financial institutions.

An action to block the investigation by constitutional objections to the appointment of Independent Counsel was dismissed by Honorable Barrington D. Parker. North v. Walsh, No. 87-0547 (D.D.C. Mar. 12, 1987). The Attorney General supported the investigation by giving Independent Counsel a back-up appointment.

I. The Scope of Independent Counsel's Investigation

The policy of grand jury secrecy underlying Rule 6(e) of the Federal Rules of Criminal Procedure counsels that the fruits of these extensive investigative efforts -- the facts uncovered, the crimes, if any, revealed, the leads to be investigated -- remain secret at this time. It can be said, however, that the grand jury has been heavily occupied and that the investigation has produced extensive and specific evidence relating to Independent Counsel's mandate from the Court.

The Senate Intelligence Committee report and the Tower Commission report portray an effort by a combination of certain Government officers, former Government officers, and other individuals to supply military assistance to the Contras notwithstanding the legal restrictions of government support of such activities. These activities included government sponsored fund raising to purchase military equipment, the purchase of such equipment, and its transportation to Nicaragua, as well as efforts to conceal these activities from Congress. Subsequently, these reports relate, members of this combination became active in the sale of United States weapons to Iran and the diversion of part of the proceeds thereof.

Independent Counsel must determine whether crimes were committed and whether evidence is available to prove these crimes. It is not sufficient to merely determine what

happened. The process requires the identification of individuals and proof beyond a reasonable doubt of the participation of each. In some cases it is not sufficient merely to prove an act, it is also necessary to prove intent. The investigation of this complex series of transactions must be extensive.

The progress of the investigation must also be uneven--much more rapid in some areas than in others. For example, an investigation into financial dealings in the United States may be well advanced, whereas that part of the investigation which depends upon Swiss financial records may be retarded by the delay in obtaining those records. For the purpose of this report, it is sufficient to say that the investigation is being pursued with earnestness and ample basis has been developed for its continuation.

The Vice Chairman of the Senate Select Committee, in a recent public statement, suggested that Independent Counsel's investigation should not be unduly prolonged; that any conspiracy to defraud the United States would be difficult to prove; that the inquiry should be narrowed to obstruction of justice; and that grand jury action should not be further delayed. The Senator may well express the point of view of others and his comment demonstrates the timeliness of this report.

There are many reasons why these suggestions may not be adopted:

First, there is no appropriate basis for narrowing Independent Counsel's investigation at this time. Most lines of inquiry are proving fruitful. None has yet been abandoned.

Second, factors affecting the timing of indictments preponderate against haste. Although in other investigations, segments of a broad activity have been singled out for early grand jury action, there are several contrary considerations under present circumstances. The likelihood of conflict between court proceedings and the oncoming Congressional public hearings cannot be ignored. Further, a partial indictment often precipitates the distraction of defense motion practice, which would divert the efforts of Independent Counsel from the ongoing investigation.

Third, an indictment in advance of immunized testimony does not eliminate problems of the testimony's impact on the trial.

Fourth, prudence and justice to individuals may, even in the absence of other factors, justify awaiting the completion of some or all of the Congressional hearings.

Accordingly, this is not the time to narrow or conclude the grand jury process. The Office of Independent Counsel and the grand jury have been proceeding at an accelerating rate and the acceleration promises to continue.

II. The Correlation Between the Congressional Inquiry and the Investigation of Independent Counsel

Except for possible problems regarding the grant of immunity which are discussed hereafter, the Congressional Select Committees and Independent Counsel have pursued mutually supportive courses. Honorable Lee H. Hamilton, Chairman of the House Select Committee, foresaw the possible problems of exchange of information and immunity. As a result, a satisfactory mechanism has evolved for the exchange of information through weekly meetings of counsel. Also, as the result of Chairman Hamilton's early warning, Independent Counsel quickly doubled the number of Associate Counsel and was assigned additional FBI Agents by Director Webster. Both committees have been generous in hearing Independent Counsel in an effort to minimize problems.

Independent Counsel has recognized from the outset the extraordinarily important role of the Congressional Select Committees. It is they who are responsible for the accurate public disclosure of the facts concerning transactions of immense national importance. Ultimately, it is they who are empowered to formulate recommendations, not only for the avoidance of similar transactions in the narrow sense, but also for consideration of possible mechanisms for less abrasive formulation of views and policy for the country's external affairs.

The law is clear in the event of conflict as to immunity between the Congressional Committees and Independent Counsel; it is the Congressional Committees which must prevail. This is no more than a recognition of the high political importance of their responsibility. It is further a recognition that the decision as to these priorities calls for the judgment of seasoned political figures who have over the years become experts in the choice between conflicting national options.

Although Independent Counsel has a reporting responsibility, his first responsibility is the prosecution of such crimes as may be exposed. This applies not only to disclosures in his own investigation, but also to crimes exposed by the investigation of the Congressional Committees. In addition, he must monitor the committee hearings for possible perjury. Accordingly, it is not his primary responsibility to develop for the public a knowledge of what occurred. This is the primary responsibility of Congress. In the absence of some factor compelling a different course, it is the plan of Independent Counsel during the period of the public hearings to continue his investigation of possible crimes.

III. Congressional Immunity May Jeopardize Criminal Prosecutions

The immunity statute provides that either House of Congress, or a Committee of either House, may confer immunity on a witness. 18 U.S.C. Section 6005. If either House or a

Committee thereof decides to do so, it must notify the Independent Counsel ten days before requesting the court order; the Independent Counsel may then defer the issuance of an immunity order for up to twenty days. 18 U.S.C. Section 6005; 28 U.S.C. Section 594(a)(7).

According to public court documents, Congress has already conferred immunity on at least eleven witnesses.1/ The Independent Counsel neither objected to immunity nor requested a deferral for seven witnesses.2/ He requested a deferral for at least four witnesses.3/ With respect to Lieutenant Colonel Oliver North and Vice Admiral John Poindexter, the Committees and the Independent Counsel reached an agreement in which the Committees agreed to defer voting on immunity for the two individuals, and the Independent Counsel agreed not to invoke the twenty-day deferral option if and when such immunity was voted by the Select Committees. Additionally, it has been suggested that the Committees may grant immunity to other individuals, including other central figures in the Iran/Contra investigation.

1/ These witnesses are Joan Corbin, John Cupp, Edward de Garay, Cynthia Dondlinger, Robert Dutton, Robert Earl, Richard Gadd, Fawn Hall, Albert Hakim, Shirley Napier, and Robert Owen.

2/ Corbin, Cupp, de Garay, Dondlinger, Dutton, Hall, and Napier.

3/ Earl, Gadd, Hakim, and Owen.

A. Congressional Grants of Use Immunity Erect Serious Barriers to Prosection

The Supreme Court held in Kastigar v. United States, 406 U.S. 441, 458, 459-60 (1972), that any grant of use immunity results in "a sweeping proscription of any use, direct or indirect, of the compelled testimony and any information derived therefrom", and casts upon the prosecution "the heavy burden of proving that all of the evidence it proposes to use was derived from legitimate independent sources." It is sometimes suggested that Kastigar requires only that the prosecution demonstrate that each item of evidence it proposes to use against the immunized witness was obtained from some source independent of the immunized testimony. However, this burden -- while in itself an onerous one -- may not be the only burden imposed upon the prosecution by Kastigar.

Although the Supreme Court has not yet determined the issue, some lower courts have held that use immunity bars a prosecutor not only from making any evidentiary use of immunized testimony, but also from making any significant nonevidentiary use, including "assistance in focusing the investigation, deciding to initiate prosecution, planning cross-examination, and otherwise generally planning trial strategy." United States v. McDaniel, 482 F.2d 305, 311 (8th Cir. 1973); accord, e.g., United States v. Semkiw, 712 F.2d 891, 894-95 (3d Cir. 1983). But see United States v. Byrd, 765 F.2d 1524, 1531 (11th Cir. 1985). In practice, the

burden of proving that the prosecution has made no significant nonevidentiary use of the immunized testimony could be difficult to satisfy, particularly in a highly publicized matter. See, e.g., United States v. Romano, 583 F.2d 1, 7-9 (1st Cir. 1978).

As stated in the United States Attorneys' Manual of the United States Department of Justice: "Although the person may still be prosecuted on the basis of independent evidence for any offense about which he/she testifies, in practice, the government's burden of proving the independent nature of its evidence is so great that successful prosecution would usually be extremely difficult. Consequently, under the circumstances of many cases, use of the statute will effectively preclude a future prosecution of the matters to which his/her testimony related." United States Attorneys' Manual at 1-11.212.

It is sometimes suggested that the experience of the Watergate prosecutions demonstrates that Congressional grants of use immunity do not significantly impede successful prosecutions. This is very misleading. If anything, the Watergate experience demonstrates the contrary. Although two immunized witnesses in the Watergate matter -- John Dean and Charles Colson -- subsequently pleaded guilty, no immunized Watergate witness who refused to plead guilty was successfully tried and convicted. Gordon Strachan, the only immunized witness who was included in the Watergate coverup indictment, never went to trial because the Watergate Special Prosecutor

conceded that there was "a significant possibility that Strachan eventually might prevail on his [taint] claim." Strachan, Self-Incrimination, Immunity and Watergate, 56 Tex. L. Rev. 791, 814-20 (1978). The same happened in the case of Felipe De Diego, who was granted immunity by State authorities in connection with the break-in of the offices of Daniel Ellsberg's psychiatrist. See United States v. De Diego, 511 F.2d 818, 822-25 (D.C. Cir. 1975).

Thus, use immunity cannot be granted without a full recognition that it will have a serious and possibly destructive impact upon a subsequent prosecution.

B. The Independent Counsel Has Undertaken Extensive Efforts to Protect the Possibility of Prosecution

Recognizing the imminence of Congressional immunity, the Independent Counsel has made extensive efforts to protect the possibility of prosecution.

First, as described above, the Independent Counsel has expedited some parts of the investigation most likely to be the subject of Congressional immunity.

Second, the Independent Counsel has developed and instituted a filing procedure to preserve evidence in a demonstrably "untainted" form. Before Congressional immunity becomes effective for an individual who is under investigation, the Independent Counsel gathers pertinent evidence and possible leads which are sealed and then lodged with the court. This

procedure helps establish the independent origin of this investigative evidence and leads.

Third, the Independent Counsel has taken steps to insulate the attorneys and investigators concerned with the possible prosecution of an immunized individual from his immunized testimony. Some attorneys will be designated as an "exposed" team, and they will be familiar with the immunized testimony. This team is necessary, among other reasons, for liaison work with other government agencies and the Select Committees, and to monitor the hearings for possible perjury.

Through these steps Independent Counsel is making a determined effort to preserve the possibility of prosecutions.

C. Additional Grants of Immunity to Central Figures in the Investigation Could Have a Devastating Effect on Possible Prosecutions

Despite the rigorous efforts of the Independent Counsel to protect possible prosecutions, grants of immunity to central figures in the investigation might preclude future prosecution of those individuals.

The unique nature of the Iran/Contra matter poses special problems. Few cases even remotely approach the exposure of immunized testimony created by nationally televised -- and nationally scrutinized -- Congressional hearings. The underlying issues involve matters of great public import and interest. High government officials are involved, and the investigations have received intense national attention.

Except, perhaps, for Watergate, the situation is virtually unprecedented.

The Watergate experience suggests the extreme difficulty of prosecution after the grant of immunity: again, not one immunized Watergate witness who refused to plead guilty was successfully tried and convicted after the grant of immunity.

Given the special nature of this investigation, it would be particularly unfortunate if otherwise appropriate prosecutions were precluded by Congressional grants of immunity. The allegations in the investigation concern possible violations of public trust and possible misuse of position by high government officials and their manipulation by former government officials. Large sums of public money are unaccounted for and those most knowlegeable resist public disclosure. In such matters, the public is entitled to a fair and deliberate prosecutive judgment. Additional grants of Congressional immunity to central figures may frustrate the even-handed application of justice which would be expected as a matter of course for principal figures in less spectacular activities.

D. A Central Figure in the Investigation Should Be Immunized Only on the Basis of an Overriding and Compelling Need

Since any grant of use immunity endangers a subsequent prosecution of the immunized witness, such immunity should not be granted to a central participant in a suspected scheme to

defraud the United States unless an overriding need compels such amnesty.

The question whether immunity should be granted to aid the Congressional inquiry is, of course, itself a policy question of great magnitude. The Select Committees and the Houses they represent have the ultimate decision as to the extent to which prosecution for crime shall be subordinated to legislative interests. At the same time, Independent Counsel finds it imperative to report that further grants of immunity to central figures in the investigation will jeopardize their prosecutions and may prevent a fair and judicious assessment of individual culpability.

For this reason Independent Counsel respectfully urges the following standards for consideration in granting immunity:

1. What assurance is there that the prospective witness will in return for immunity tell the truth? Has there been a proffer of his testimony which can be checked for honesty against the evidence already assembled?

2. Would the prospective witness ordinarily be a logical subject for prosecutive consideration? Is there substantial evidence of an enterprise designed to frustrate the enacted legislative policy of the United States? Was the prospective witness a sophisticated and deliberate leader of that enterprise? Did he personally profit from it? Did he corrupt government officers of the United States or of foreign governments? Did he, if an

officer of the United States, accept, or agree to accept, proceeds of transactions ostensibly for the benefit of the United States?

3. Is there no less culpable person to supply the evidence sought by grant of immunity?

Conclusion

Reasonable restraints in the grant of immunity by the Congressional Committees will enable both investigations to achieve the important results properly expected of them. The investigation of Independent Counsel is progressing and accelerating. It promises a result which will satisfy the public interest in even-handed application of the rule of law.

LAWRENCE E. WALSH
Independent Counsel

April 28, 1987

[redacted]

SECOND INTERIM REPORT TO CONGRESS BY INDEPENDENT COUNSEL FOR IRAN/CONTRA MATTERS

LAWRENCE E. WALSH
INDEPENDENT COUNSEL

DECEMBER 11, 1989

[redacted]

SECOND INTERIM REPORT TO CONGRESS
BY INDEPENDENT COUNSEL FOR IRAN/CONTRA MATTERS

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SECOND INTERIM REPORT TO CONGRESS
BY INDEPENDENT COUNSEL FOR IRAN/CONTRA MATTERS

Executive Summary

This second interim report of the Independent Counsel for the Iran/Contra matter addresses the problems of prosecuting public officials involved in national security activities. It is our concern that the Attorney General undervalued the principle that all persons are accountable to the law when he caused the November 24, 1989, dismissal of the prosecution of Joseph Fernandez, former CIA station chief in Costa Rica.

- Under the Classified Information Procedures Act, the Attorney General blocked disclosure of two categories of classified information in Fernandez: (1) details of three United States programs in Costa Rica; and (2) the existence and location of [redacted] CIA stations and one facility in Latin America. It is our belief that these secrets, particularly the existence of the stations and facility, would have been sacrificed for some other Administration objective -- military, diplomatic or political. Law enforcement, apparently, is not given an appropriate priority in the hierarchy governing the intelligence agencies' willingness to divulge secrets.

- Fernandez exposes a potential conflict of interest when intelligence agency personnel are subject to investigation by an independent counsel. The outcome in Fernandez calls into question whether, even with CIPA, important officials in the intelligence community who are subject to prosecution under the Ethics in Government Act can be tried for crimes related to their official duties. Under the present law, this depends largely on the good faith and priorities of the intelligence agencies.

- The North and Secord cases proved that a constructive interchange between the court, Independent Counsel and

[redacted]

the executive agencies can both accomplish fair trials of defendants and protect national security. Fernandez is, however, the clearest example of what can occur when this cooperative process is impaired by institutional self-interest. Disregarding a possible conflict of interest, the Attorney General relied exclusively upon the views of the intelligence community to end a prosecution that could have exposed others engaged in CIA activities.

- The Attorney General's affidavit to withhold information in Fernandez is written as if disclosures about the Iran/Contra affair had never occurred. We suggest that the injury to national security flows from support of illegal activities undertaken by former CIA officials, and not from their investigation and prosection.

- The supporting affidavits of the intelligence officials in Fernandez are based largely on speculation about the effect that public acknowledgement of CIA stations might have on intelligence-gathering capabilities. None of these assessments of risk are supported by hard data about the state of affairs in the countries at issue, about the sources of potential risk, or about the measures that could be taken to compensate for these risks.

- While asserting that grave national security damage could result from the disclosure of classified information in Fernandez, the Attorney General undercuts the credibility of his own affidavit by stating that he might reconsider his decision and permit the release of the information if dismissal of the indictment is affirmed on appeal. After taking an improper interlocutory appeal himself, the Attorney General appears to be using his ultimate power under CIPA to force an appeal by Independent Counsel.

- Decisions to withhold classified information from important criminal trials should be made objectively. CIPA affidavits should factually demonstrate the potential dangers of disclosure, citing such information as historical analogs and the extent of existing public knowledge of the information. Also, consideration should be given to actions that could offset the ill effects of disclosure, such as increased diplomatic activities or other remedies to operational upsets.

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SECOND INTERIM REPORT TO CONGRESS BY INDEPENDENT COUNSEL FOR IRAN/CONTRA MATTERS

Introduction

This second interim report of the Independent Counsel for the Iran/Contra matter addresses the problems of prosecuting public officials involved in national security activities.[1/] It is prompted by the November 24, 1989, dismissal of all charges against Joseph Fernandez, the former CIA chief of station in Costa Rica, which resulted from the Attorney General's refusal to allow the disclosure of certain classified information. It is our concern that the Attorney General, in causing the dismissal of a significant Iran/Contra prosecution, undervalued the principle that all persons are accountable to the law.

The information withheld by the Attorney General consists of two categories that United States District Court Judge Claude M. Hilton ruled material to the defense. The first was a description of three United States programs in Costa Rica. The defendant's purported need for this information was limited to certain portions of the charges

1/ The Ethics in Government Act authorizes an independent counsel "to submit to the Congress such statements or reports on the activities of such independent counsel as. . . appropriate." 28 U.S.C. § 595(a)(2).

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[redacted]

and, if it alone had been withheld, a narrowed prosecution probably could have survived.

The second category was the existence and location of [redacted] CIA stations and a facility in Latin America. These facts are publicly known. The Administration withheld the information, however, solely to avoid government acknowledgment of these known facts, which would have been referred to in trial documents and in the testimony of witnesses. Mr. Fernandez claimed that this information was central to his defense and material to all counts of the indictment.

Under section 6(e) of the Classified Information Procedures Act, 18 U.S.C. App. IV §§ 1-16 ("CIPA"), the Attorney General makes the final decision whether to allow classified information to be disclosed in open court. In making this determination, the Attorney General must balance the consequences of releasing classified information against the public interest in the pending prosecution. Striking the balance properly requires a full knowledge of the importance of the case. The affidavit filed by the Attorney General in Fernandez states that he accepts Independent Counsel's judgment as to the importance of the prosecution. Yet, neither the Attorney General's affidavit nor those of the

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intelligence agencies take account of the predicted exposure of defendant's superiors in the CIA.

This report questions the balance struck by the Attorney General in the Fernandez case. It is our belief that the so-called secrets involved in Fernandez would have been sacrificed for some other Administration objective -- military, diplomatic or political. Apparently the Attorney General, who based his decision to file a CIPA § 6(e) affidavit on the advice of the intelligence agencies, decided that the prosecution of an important CIA official does not have comparable value.

Part One of this report summarizes the current status of the Iran/Contra prosecutions. Part Two describes the interplay of Independent Counsel, the intelligence agencies and the District Court regarding CIPA problems in the North, Secord, and Fernandez cases. Part Three examines the need for more exacting standards and procedures to protect criminal prosecutions from unwarranted interference by the intelligence agencies. This need becomes especially apparent if the prosecution is by an independent counsel -- an outsider who does not have, under CIPA, the Attorney General's power to protect his own prosecution. We do not expect legislative changes to be made for the benefit of our

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own prosecutions. Rather, this report is submitted so that Congress may consider the problem for the future, before the lessons of Iran/Contra have been forgotten.

Before presenting this matter to Congress -- indeed, even before the 6(e) affidavit was issued in Fernandez -- Independent Counsel attempted to bring this problem to the attention of the President. His counsel rejected the request as inappropriate. We believe that he was wrong and that it would have been appropriate for this matter to have received executive consideration and correction before seeking relief from Congress. (The correspondence with the White House is attached as Exhibit A.)

I. Investigative Background

On November 25, 1986, President Reagan and then-Attorney General Edwin Meese held a news conference at which the Attorney General announced that proceeds of United States arms sales to Iran had been diverted to assist the Contras in Nicaragua. On December 19, 1986, pursuant to the Attorney General's application and based upon the appearance of a conflict of interest, a special division of the United States Court of Appeals for the District of Columbia Circuit

[redacted]

[redacted]

appointed me as Independent Counsel under the Ethics in Government Act, with jurisdiction in the following areas:

> (1) the direct or indirect sale, shipment, or transfer since in or about 1984 down to the present, of military arms, material, or funds to the Government of Iran, officials of that government, persons, organizations or entities connected with or purporting to represent that government, or persons located in Iran;
>
> (2) the direct or indirect sale, shipment, or transfer of military arms, material or funds to any government, entity, or person acting, or purporting to act as an intermediary in any transaction above referred to in section (1);
>
> (3) the financing or funding of any direct or indirect sale, shipment or transfer referred to in section (1) or (2);
>
> (4) the diversion of the proceeds from any transaction described in section (1) or (2) to or for any person, organization, foreign government, or any faction or body of insurgents in any foreign country, including, but not limited to Nicaragua;
>
> (5) the provision or coordination of support for persons or entities engaged as military insurgents in armed conflict with the Government of Nicaragua since 1984.

In December 1986, Independent Counsel began an investigation into these areas. The investigation was

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quickly expanded and expedited to secure as much information as possible before the exposure of immunized testimony during the Congressional Iran/Contra hearings. It was then delayed several months awaiting Swiss financial records. The investigation has resulted to date in the indictment and convictions of the following individuals:

1. Carl R. Channell. On April 29, 1987, Mr. Channell pleaded guilty to a one-count information charging him with conspiracy to defraud the United States in connection with the use of a tax-exempt organization to assist the military and paramilitary activities of the Contras, in violation of 18 U.S.C. § 371. Mr. Channell was sentenced on July 7, 1989.
2. Richard R. Miller. On May 6, 1987, Mr. Miller pleaded guilty to a one-count information charging him with the identical offense committed by Mr. Channell. Mr. Miller was sentenced on July 6, 1989.
3. Robert C. McFarlane. On March 11, 1988, Mr. McFarlane pleaded guilty to a four-count information charging him with violations of 2 U.S.C. § 192, withholding information from Congress. Mr. McFarlane was sentenced on March 3, 1989.

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4. John M. Poindexter, Oliver L. North, Richard Secord, and Albert Hakim, indicted on March 16, 1988, in Criminal No. 88-0080 (D.D.C).

a. John M. Poindexter. Mr. Poindexter is scheduled for trial on January 22, 1990. Since his indictment he has consistently denied any guilt and his case is being vigorously defended. This report does not discuss the facts relating to him or the pending case and nothing herein is intended as an expression of opinion, direct or indirect, as to him or any aspect of the pending case.

b. Oliver L. North. Mr. North was indicted for conspiracy to defraud the United States to violate certain federal criminal statutes; and for theft of United States property; wire fraud; false statements to Congressional Committees and to the Attorney General; obstruction of investigations being conducted by Congressional Committees and the Attorney General; unlawful destruction, alteration, and removal of official records; receipt of an illegal gratuity; conversion of travelers checks entrusted to North by a Contra leader; and conspiracy to defraud the United States by misusing a tax exempt organization to raise

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funds for the military and paramilitary activities of the Contras. In June 1988, United States District Court Judge Gerhard A. Gesell severed United States v. North from the cases against the three other defendants.

In October, November, and December 1988 Judge Gesell denied defense motions attacking each count of the indictment, holding, among other things, that the indictment was valid as a matter of law and that the conduct charged in the conspiracy count and in other counts was criminal.

CIPA hearings in North began in late November 1988. In early January 1989, as a result of orders by Judge Gesell that certain classified information -- which the intelligence agencies refused to disclose -- was relevant and admissible, Independent Counsel, in order to avoid an affidavit from the Attorney General forcing dismissal, moved for voluntary dismissal of the conspiracy and theft charges, both of which embraced the diversion of Iranian arms sales proceeds to the Contras. (These CIPA problems are discussed more extensively hereafter beginning at page 17.)

On January 31, 1989, United States v. North went to trial on the remaining charges. Trial proceedings

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lasted approximately three months. CIPA problems frequently interrupted the trial. On May 4, 1989, the jury convicted North of aiding and abetting an obstruction of Congress in November 1986; unlawful alteration, destruction, and removal of documents; and receipt of an illegal gratuity. It acquitted him on the remaining counts. Judgment of conviction and sentence for those crimes was entered on July 5, 1989, and that judgment is now on appeal to the United States Court of Appeals for the District of Columbia Circuit.

c. Richard V. Secord. The charges originally brought against Mr. Secord were conspiracy to defraud the United States and to violate federal statutes, theft of United States property, wire fraud, conspiracy to pay illegal gratuities to North, and the actual payment of a gratuity to North. On March 16, 1989, a second indictment was returned against Mr. Secord alleging perjury, false statements, and obstruction in connection with Mr. Secord's 1987 testimony before the House and Senate Iran/Contra Select Committees. Those charges were consolidated with the original charges against Mr. Secord. The conspiracy, theft, and wire fraud counts relating to the diversion were then voluntarily

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dismissed in order to avoid CIPA problems at trial and in discovery. On November 8, 1989, Mr. Secord pleaded guilty to Count Nine of the indictment, which charged him with having made a false statement to representatives of the joint Iran/Contra Committees of the Senate and House of Representatives. A date for sentencing has not yet been set.

d. Albert Hakim. Mr. Hakim was charged with conspiracy to defraud the United States and to violate federal statutes, theft of United States property, wire fraud, conspiracy to pay illegal gratuities, and an attempt to pay illegal gratuities. At the time of severance, the government was confronted with significant discovery problems because Mr. Hakim lacked security clearances. Proceedings were stayed until the end of the North proceeding. On November 21, 1989, Mr. Hakim pleaded guilty to a one-count information charging him with unlawfully supplementing the salary of North, a government officer. In addition, Lake Resources, Inc., a company controlled by Mr. Hakim, pleaded guilty to a one-count information charging it with theft of United States funds arising out of the diversion of Iranian

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arms sale profits. Sentencing is set for February 1, 1990.

The Swiss accounts that contain the diverted funds have been frozen, and certain individuals have asserted claims against the funds. Proceedings are in process for the recovery of the funds.

5. Joseph F. Fernandez. In April 1989, Mr. Fernandez, formerly the CIA's chief of station in San Jose, Costa Rica, was charged in the Eastern District of Virginia in a four-count indictment alleging false statements and obstruction in connection with investigations into assistance to the Contras that were conducted in 1986-1987 by the Tower Commission and by the CIA's Inspector General.[2/] Fernandez was accused of making false and misleading statements regarding his involvement in the construction of an airstrip to assist the Contras, as well as his knowledge of and participation in the Contra resupply operation coordinated by Oliver North.

[2/] Fernandez was originally indicted on June 20, 1988, in the District of Columbia on similar charges that also included conspiracy to defraud the United States. In response to defendant's motion to dismiss certain counts of the District of Columbia indictment based on venue, Independent Counsel moved to dismiss the entire indictment without prejudice. Chief District Judge Aubrey E. Robinson, Jr. granted Independent Counsel's motion on October 19, 1988.

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On July 10 and 13, the district judge ruled that classified information as to the existence and location of CIA stations and one facility in certain Latin American countries and certain United States programs in Costa Rica were material to Mr. Fernandez' defense. The trial of the case, set for July 24, 1989, was stayed by the United States Court of Appeals for the Fourth Circuit at the request of the Attorney General who attempted to appeal from the District Court's ruling.

The appeal was argued before a panel of the Court of Appeals on August 23, 1989. On September 29, 1989, the Court ruled unanimously that the Department of Justice did not have standing to appeal in a prosecution by an independent counsel. The Attorney General then obtained a 30-day extension of time to consider whether he would petition the Court for rehearing. At the end of the 30-day period, he announced he would not do so. On November 22, 1989, at a status conference sought by Independent Counsel, the Department of Justice filed a CIPA § 6(e) affidavit barring the disclosure of all of the classified information in question, including specific acknowledgment of a publicly-known fact -- the existence and location of CIA stations and facilities.

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On November 24, 1989, in response to the CIPA § 6(e) affidavit, the District Court dismissed the indictment in Fernandez. Independent Counsel has appealed.

Notwithstanding the problems of classified information, Independent Counsel has met or is proceeding toward meeting several important objectives. First, as a result of the prosecutions of this office, the conduct charged in the original indictment against North and others has been held criminal. This includes the broad conspiracy charge alleged in Count One of the March 1988 indictment against North, Poindexter, Hakim and Secord. These rulings constitute a precedent for future activities of the National Security Council and other agencies involved in intelligence activities. It also established the applicability of the penal law to activities intended to obstruct informal Congressional inquiries. Second, many of those guilty of the principal Iran/Contra activities have been convicted of some crime, although not necessarily those central to their Iran/Contra activities, which has brought them within the sentencing power of the court. Finally, as the trials of those defendants who have received Congressional immunity are completed, the office can accelerate the investigations of Iran/Contra actors who did not give immunized testimony.

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II. Application of CIPA

Congress enacted the Classified Information Procedures Act, 18 U.S.C. App. IV §§ 1-16 ("CIPA"), to facilitate the use of classified information in criminal trials. CIPA comes into play when a criminal defendant claims that classified information is material to his case. Before the enactment of the statute, these disputes could force the government to end prosecutions because of "graymail" -- a defendant's threat to disclose classified information at trial to force the government to narrow or dismiss the charges against him. Although CIPA cannot prevent graymail, the statute provides a procedure for resolving classified information issues.

CIPA's main function is to identify potential problems with classified information before a trial begins. It requires the defendant to provide the government with a description of all classified information that he will use in his defense. Through pretrial hearings, the court determines whether the information is admissible at trial. If the court determines that classified information should be part of the defense, the parties may propose substitutions or other alternatives to the court designed to allow the trial to

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proceed.[1/] The government may appeal the court's decisions on these issues pretrial. See 18 U.S.C. App. IV § 7(a).

CIPA gives the ultimate decision as to whether classified information is to be released to the Attorney

[1/] Sections 5 and 6 of CIPA implement this process. Section 5 requires a criminal defendant to notify the trial court and the prosecution that it intends to use classified information at any point during pretrial or trial proceedings, and to provide a brief description of the classified material to be used. The defendant may not publicly disclose any classified information until: 1) ordered to do so by the trial court; 2) the Attorney General has been given sufficient time to consider whether disclosure of the information should be prohibited; and 3) the time for appeal under CIPA § 7 has expired or any appeal has been completed. See 18 U.S.C. App. IV § 5(a).

Once the defendant has complied with CIPA's § 5 procedure, the trial court holds a hearing to determine whether the classified information at issue is material to the accused's defense. This hearing may be closed if the government certifies to the court that a public proceeding would result in disclosure of classified information. See 18 U.S.C. App. IV § 6(a). If classified information is material to the defendant's case, the court may order disclosure, or it may authorize substitutions for the information in the form of a summary of the evidence or an admission by the Government. See 18 U.S.C. App. IV §§ 6(b), 6(c).

Through this process, the court may examine whether the production of classified information is necessary for trial. The process also allows the government to determine whether pursuing a trial or protecting the secrets at issue is more important to the public interest if the court rules that the disclosure of classified evidence is material to the defendant's case.

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General.[4] His power to block the release of this information is absolute and unreviewable. See 18 U.S.C. App. IV § 6(e). The court must then either dismiss the case or impose some more moderate sanction. See 18 U.S.C. § 6(e)(2). Although an independent counsel assumes all of the investigative and prosecutorial powers of the Attorney General, the absolute power to withhold classified information through the filing of a CIPA § 6(e) affidavit is left with the Attorney General.[5]

CIPA has worked, overall, in protecting information subject to disclosure in criminal trials. It has enabled Independent Counsel to prosecute some Iran/Contra defendants on some charges related to the cover-up of misconduct, although charges central to the misconduct have had to be

[4] Section 6(e) of CIPA authorizes the Attorney General to issue an affidavit that prohibits the disclosure of classified information at a criminal trial. See 18 U.S.C. App. IV § 6(e)(1). Once the Attorney General files such an affidavit, the court must order the defendant not to disclose any classified materials, and it must either dismiss the indictment, dismiss certain counts, or fashion some other sanction as the interests of justice require. See 18 U.S.C. App. IV § 6(e)(2).

[5] CIPA expressly restricts this power to the Attorney General or a designated Deputy or Assistant Attorney General. See 18 U.S.C. App. IV § 6(e)(1). The Ethics in Government Act does not transfer this power to an independent counsel. See 28 U.S.C. § 594 (authorities and duties of an independent counsel).

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dropped because of classified information problems. The statute's procedures have been utilized in the prosecutions of Oliver North, Richard Secord, and Joseph Fernandez. The statute led to a lengthened discovery process in all of these cases, and in Fernandez it ultimately led to the dismissal of all charges against the defendant.

Fernandez exposes a potential conflict of interest when intelligence agency personnel are subject to investigation by an independent counsel. The outcome in Fernandez calls into question whether, even with CIPA, important officials in the intelligence community who are subject to prosecution under the Ethics in Government Act can be tried for crimes related to their official duties. Under the present law, this depends largely on the good faith and priorities of the intelligence agencies.

A. The Application of CIPA in North

An Interagency Review Group was appointed by the intelligence agencies just prior to the March 1988 indictment of North and three co-defendants. This group reviewed the indictment to avoid the possibility that the indictment itself might disclose classified information. From then until the present, Independent Counsel has been in very frequent discussions with this group. It has monitored the

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production of classified documents during discovery, the redaction of documents for use at trial, the drafting of substitutions for classified documents, and the trial itself. We believe that more attorney hours were spent in conference with the Interagency Review Group than in the courtroom. The North prosecution could not have proceeded without this group's extraordinary efforts to meet the demands of the Court.

On April 15, 1988, approximately one month after the indictment of North and his co-defendants, United States District Court Judge Gerhard A. Gesell granted Independent Counsel's motion under Section 3 of CIPA for a protective order that established procedures for handling classified information in the case. The Court's order required the establishment of a separate secure suite of fully equipped offices for the defendants, funded by Independent Counsel. Independent Counsel then provided to North and his co-defendants through discovery hundreds of thousands of classified and unclassified documents. On June 15, 1988, Judge Gesell ordered the production to North's counsel of all the government's intended case-in-chief documents, which had been marked by the Interagency Review Group to indicate the specific classified information that was to be redacted. The

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government's case did not require the disclosure of any classified information.

On July 8, 1988, Judge Gesell scheduled trial for North[6/] on September 20, 1988, and ordered him to file by August 1 a CIPA § 5 notice listing the classified information he expected to disclose at trial. The trial was subsequently delayed, however, by discovery concerning an additional amount of classified information for North and an abortive commencement of the CIPA proceedings.[7/] This process

[6/] On June 8, 1988, Judge Gesell granted the defendants' joint motion that their trials be severed. Independent Counsel elected to proceed first with the trial of defendant North.

[7/] On August 1, 1988, North filed two notices pursuant to CIPA § 5. North's first notice was a blanket objection to all of Independent Counsel's proposals to redact classified information from the case-in-chief; his second notice was a 265-page, single-spaced listing for use at trial of virtually every classified document provided to North during discovery. On August 5, 1988, Judge Gesell granted Independent Counsel's motion to strike North's notice, but cancelled the September 20, 1988, trial date and permitted North to file a more particularized notice on November 14, 1988. The delay was in part due to the time required by the intelligence agencies to complete supplemental discovery production ordered by the Court, after an ex parte conference with the defendant and his counsel. This production was authorized at a meeting of Agency heads on July 17, 1988, with a warning that some of it could not be used at trial.

On November 14, 1988, North filed a supplemental CIPA § 5 notice, which covered over 40,000 pages of classified documents and 90 tape recordings. On December 12, 1988, Judge Gesell struck North's supplemental notice and, as a

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culminated in North's ex parte filing of a 162-page narrative statement concerning the classified testimony he expected to disclose at trial on December 19, 1988, and of North's third CIPA § 5 notice on January 3, 1989, listing 300 classified documents he expected to introduce as evidence at trial.

During this process, Judge Gesell conducted in camera hearings to review the materiality and relevance of classified information redacted from Independent Counsel's 395 proposed case-in-chief documents. In these hearings, Judge Gesell made a number of tentative rulings and comments. Finally, on December 12, 1988, following these hearings, Judge Gesell issued an opinion setting forth general pretrial relevance and materiality determinations governing categories of classified information.

The intelligence agencies expressed intense concern that Judge Gesell's rulings denying redactions in certain case-in-chief exhibits would result in an unacceptable disclosure of classified information. Independent Counsel eliminated the relevant documents from its case-in-chief, but

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sanction, limited North to noticing no more than 300 classified documents by January 3, 1989. Judge Gesell also ordered North to provide notice of any classified information he expected to elicit through testimony.

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the problem remained because the documents were also noticed by North as defense exhibits. Independent Counsel believed that two of the primary concerns of the intelligence agencies -- the names of certain Latin American countries and general references to one of the capabilities of a particular intelligence agency -- were publicly known and should not be the subject of a CIPA § 6(e) affidavit. Instead, Independent Counsel argued that if these two categories of information, as well as improved substitutions for certain intelligence reports, could be used at the North trial, there was a reasonable possibility that the trial could go forward on all counts.[y] Independent Counsel submitted a memorandum to the Attorney General on December 20, 1988, that set forth his position as to these two categories of evidence and enclosed an appendix of numerous public references to such information both by government representatives and by private persons. (This memorandum is attached as Exhibit B.)

The Attorney General held a Cabinet-level meeting with representatives of the intelligence agencies on December 21, 1988. Independent Counsel offered to confer with the Attorney General and to attend this meeting, but his offer

[y] In mid-December 1988, the NSA rejected a critical substitution which might have preserved Counts One and Two.

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was rejected. Instead, Independent Counsel was informed by telephone that the intelligence community would not permit the disclosure at trial of most of the information at issue. He also was informed that the Attorney General would supply a CIPA § 6(e) affidavit prohibiting the disclosure of this information. On December 23, 1988, Independent Counsel received a letter from an Assistant Attorney General enclosing a letter from the Director of Central Intelligence firmly stating that most of the information could not be produced. (These letters are attached as Exhibit C.)

In an attempt to render use of the evidence unnecessary, Independent Counsel had moved on December 22, 1988, for reconsideration of Judge Gesell's order on materiality. The motion was denied on January 3, 1989. On January 4, 1989, after deciding not to appeal Judge Gesell's order denying reconsideration, Independent Counsel was encouraged by the Legal Advisor of the State Department and the Deputy Assistant Attorney General of the Criminal Division to believe that the trial on the remaining counts could probably be completed if Counts One and Two were dropped. Independent Counsel met that same day with the Attorney General to inform him that Counts One and Two could not be tried if, as he had been informed, the Attorney

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General supported the classification determinations of the intelligence agencies.

At this meeting, Independent Counsel informed the Attorney General that he would move pursuant to Federal Rule of Criminal Procedure 48(a) to dismiss Counts One and Two. Independent Counsel moved to dismiss Counts One and Two on January 5, 1989. Judge Gesell granted the motion on January 13, 1989, but first required the Attorney General to supply a declaration stating that a CIPA § 6(e) affidavit would have been filed to prevent the introduction of the evidence at issue.

In his CIPA rulings regarding the defendant's case, Judge Gesell did not determine the relevance of the classified information document by document, but instead determined that information falling into certain categories was either relevant or irrelevant. On January 27, 1989, four days before the North trial was scheduled to begin, Independent Counsel, in order to meet the demands of the intelligence agencies and the Department of Justice, filed a memorandum proposing certain procedures to ensure further that certain classified information would not be disclosed at trial. Judge Gesell rejected those procedures as unwieldy. On February 8, 1989, Independent Counsel filed a

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clarification motion that set forth the specific classified information that North would not be permitted to reveal without prior notice and permission of the Court. That same day, Judge Gesell granted Independent Counsel's motion. Independent Counsel was satisfied that Judge Gesell had done all that he would do and that this was sufficient to protect classified information at trial.

Nevertheless, over the opposition of Independent Counsel, the Department of Justice on February 9, 1989 -- the final day of jury selection -- filed a notice of appeal under CIPA § 7 and sought a stay of the trial, arguing that Judge Gesell had failed to follow the procedures prescribed by CIPA. Judge Gesell denied the Department's motion, holding that the Department lacked the legal authority to take an appeal under CIPA in a case being prosecuted by an independent counsel. The Department then obtained an administrative stay in the Court of Appeals, which a three-judge panel quickly vacated. The Department then applied for and was granted a stay in the Supreme Court by Chief Justice Rehnquist pending consideration of the Department's application by the full Court.

On February 14, 1989, after negotiations between Independent Counsel and the Department of Justice, Judge

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Gesell largely confirmed Independent Counsel's interpretation of earlier Court rulings as prohibiting the disclosure of certain sensitive specified categories of classified information at trial, except after prior notice to the court and counsel. Although the Department of Justice was excluded as a participant in the trial, it was assured by Independent Counsel that he would promptly inform it of any effort by the defendant to introduce the excluded information. Accordingly, the Department of Justice withdrew its pending appeals.

The North trial commenced on February 21, 1989. During the trial, CIPA problems frequently arose, but they were resolved by negotiations between Independent Counsel and the agencies. Legal Advisors of the Department of State and the CIA, with the assistance of Independent Counsel, developed an extensive trial admission dealing with the difficult and highly classified question of the conversations between the highest officials of this country and certain Latin American countries as to reciprocal arrangements regarding the support of the Contras. The agencies also relaxed their restrictions on the use of certain country names and places. Other problems arose during the course of trial and also were resolved: the NSA consented to a

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stipulation for use by the jury which avoided a possible impasse and ten days before the end of trial the CIA was persuaded not to request a CIPA § 6(e) affidavit withholding evidence identifying the existence and location of a CIA station in Latin America. In sum, by their forbearance, the intelligence agencies and the Department of Justice permitted Independent Counsel to meet the expanded rulings of the Court calling for additional classified information and thus complete the trial.

B. The Application of CIPA in Secord

Mr. Secord received extensive classified discovery from the government prior to Judge Gesell's severance order of June 8, 1988, even though Secord, in contrast to North and Poindexter, lacked formal clearances that would have entitled him to routine access to classified documents. The only special limitations on discovery placed on Secord prior to severance involved particularly sensitive programs of which North and Poindexter alone among the defendants had detailed knowledge, and which were unrelated to Iran/Contra.

Before the return of the second indictment against Secord in March 1989, representatives of the Independent Counsel met with t › Interagency Review Group in order to seek the views of the intelligence agencies on classified

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information prior to indictment. This indictment was able to avoid problems with classified information to an extent greater than other cases, largely because of the nature of the crimes charged. These charges centered on Secord's public statements regarding his personal profits from the Enterprise rather than operational matters. Following return of the new indictment, the Court consolidated the charges against Secord, and the Independent Counsel voluntarily dismissed the original three charges of conspiracy, theft of government property, and wire fraud.

Classified discovery issues were handled smoothly with guidance from the Court. In September 1989, Secord first filed formal discovery requests seeking large amounts of classified information. United States District Court Judge Aubrey E. Robinson, Jr., effectively narrowed those requests by his discovery rulings. The intelligence agencies agreed to provide Secord with the classified discovery ordered by the court.

Secord notified the government of his intent to disclose classified information at trial in a CIPA § 5 notice dated October 16, 1989. His notice listed several generic categories of information, and had attached approximately one hundred classified documents provided to Secord in discovery.

At oral argument, Judge Robinson appeared be unwilling to allow defendant to introduce the information noticed. At this time, plea negotiations between Independent Counsel and Secord became serious. Shortly thereafter, Secord pleaded guilty to a violation of 18 U.S.C. § 1001, making false statements to Congress, for which he is subject to imprisonment for up to five years.

C. Application of CIPA in Fernandez

After the conclusion of the North trial, pretrial activities began in the remaining cases. Independent Counsel was confronted with discovery problems and was faced very quickly with the question of whether the conspiracy and diversion counts would be dropped. It became clear from discussions that the agencies were dissatisfied with the procedures of Judge Gesell and with the extent of the disclosures that had been drawn from them. This attitude forecast greater rigidity by the agencies and became manifest in Fernandez.[2/]

[2/] In the period between the dismissal of the District of Columbia indictment and the Eastern District of Virginia re-indictment, this office had discussions with the CIA regarding CIPA problems that might surface in Fernandez. In deference to the CIA's concerns regarding the predicted need of the defendant to expose classified information in order to defend against the conspiracy charge, and in light of Independent Counsel's voluntary dismissal of similar charges

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As in North, a large number of classified documents were produced to Fernandez during the course of discovery subject to the terms of a protective order. Fernandez' counsel identified approximately 3,500 pages as important to his client's defense and sought an order from the District Court requiring the Interagency Review Group to "bracket" the specific classified information contained in these documents. Over the government's objection, United States District Court Judge Claude Hilton granted the defendant's motion on May 5, 1989.

On May 24, 1989, the defendant gave his first CIPA § 5 notice of his intention to disclose classified information. On June 16, 1989, Judge Hilton held in abeyance Fernandez' motion to declare CIPA unconstitutional as applied to this case. On June 23, 1989, the defendant filed a second notice and simultaneously a separate CIPA § 5 notice ex parte, to identify the classified information Fernandez would disclose through testimony at trial. On June 27, 1989, the Court ordered an "amended CIPA notice" that was to contain

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in North, Independent Counsel did not present the broad conspiracy charge to the Eastern District of Virginia grand jury. The charges in the Virginia indictment were limited, therefore, to false statements and obstruction of justice.

fewer documents and to be arranged in informational categories. The Court permitted Fernandez to file his "testimonial" notice ex parte.

The defendant's "amended" CIPA § 5 notice still identified over 500 separate documents arranged in 42 categories. On July 5, Judge Hilton conducted an ex parte, in camera session during which the defendant discussed the classified information he wished to disclose through his own testimony. The Court thereafter instructed the defendant to give notice to the government of six of the additional topics of classified information he sought to disclose, which he did on July 7, 1989.

Judge Hilton conducted CIPA § 6 hearings on the admissibility of classified information at trial on July 10 and 13, 1989. Much of the classified information Fernandez sought to use was held irrelevant or inadmissible, or was replaced by a substitution of declassified information. Two categories of classified information, however, ultimately proved to be problematic. Over relevancy objections by Independent Counsel, Judge Hilton ruled that Fernandez could disclose at trial classified information pertaining to: (1) the existence and locations of CIA stations and one facility in Latin America; and (2) the details of United

States programs in Costa Rica. Independent Counsel proposed several substitutions, all of which were rejected by the Court. Because it was expected that the Attorney General would protect category (2) by a § 6(e) affidavit, Independent Counsel later proposed a narrowing of the charges in the indictment. This was also rejected by the Court.

A week before the scheduled July 24, 1989, trial date and after the pretrial hearings had concluded, Independent Counsel was informed that, unlike the position the CIA had taken in the North trial, the Attorney General had been requested by the CIA to file an affidavit pursuant to CIPA § 6(e) prohibiting the disclosure of category (1) information, i.e., the existence and location of CIA stations and a facility that Judge Hilton had ruled relevant to the defense. Independent Counsel opposed the refusal to disclose the publicly known existence and location of the stations and facilities. He urged this position upon the Assistant Attorney General who was designated for this purpose.

On July 18, 1989, Independent Counsel submitted a memorandum to the Attorney General objecting to the issuance of a CIPA § 6(e) affidavit barring the disclosure of the information as to CIA stations and facilities. This was

accompanied by clippings showing public knowledge and, in some cases, official confirmation of these facts. He requested through the Attorney General an opportunity to present his views to the White House. Justice officials pressed Independent Counsel to take an interlocutory appeal, which he declined as premature. (The memorandum and correspondence are attached as Exhibit D.)

There was a conference of agency head representatives and the Assistant Attorney General at the White House. Again, as in North, Independent Counsel was excluded. This group apparently reached no final decision as to whether a CIPA § 6(e) affidavit would be filed, and what its contents would be.

Independent Counsel, at least, was informed of no such decision. Independent Counsel then conferred with the Director of Central Intelligence and his senior advisors, and the Attorney General's designee. They ultimately agreed to a substitution that would have permitted the jury to receive the full information as long as the facilities were identified by numbers in the public trial. It was realized that the media would quickly identify the stations and facilities, and refer to them by name rather than by number. To our knowledge, no decision was made by the Assistant

Attorney General as to the scope of the Attorney General's affidavit.

On the morning scheduled for the trial, July 24, 1989, the government with CIA approval offered to disclose the locations in question to the jury while referring to them publicly by keyed numbers. This was rejected by the Court as a belated repetition of earlier substitution efforts. Instead of filing a CIPA § 6(e) affidavit, the Department of Justice sought to stay the trial and appeal Judge Hilton's rulings under CIPA. Judge Hilton denied this effort to intervene. On the afternoon of July 24, however, the Court of Appeals granted an emergency stay of the trial pending consideration by the Court of the Department's appeal.

On August 23, 1989, a three-judge panel of the United States Court of Appeals for the Fourth Circuit heard oral argument on two issues: (1) whether the Department of Justice had the legal authority to appeal District Court CIPA rulings in a prosecution brought by an independent counsel; and (2) whether Judge Hilton had abused his discretion in rejecting the various substitutions for classified information proposed by Independent Counsel. On September 29, 1989, the Court of Appeals ruled unanimously that the Department of Justice had no legal authority to

appeal the District Court's CIPA rulings in a case brought by an independent counsel. The Court dismissed the appeal and lifted the stay of trial. It did not consider the merits of Judge Hilton's rulings on materiality.

On October 12, 1989, one day before the mandate of the Court of Appeals was to issue, the Department of Justice, without prior notice to Independent Counsel, obtained a 30-day extension of time in which to petition the Court for rehearing. On November 13, 1989, the Department of Justice announced that it would not seek further appellate review but still refused to define the scope of the Attorney General's affidavit. On November 14, 1989, the mandate of the Court of Appeals returned the case to the District Court.

Upon the issuance of the mandate, Independent Counsel requested that the Department of Justice inform him whether it would be submitting a CIPA § 6(e) affidavit and, if so, whether it would bar information as to CIA stations and facilities. The Department indicated that it would not provide this information prior to the setting of a firm date for a status conference unless Independent Counsel agreed to keep the decision secret from the defendant and the District Court. Independent Counsel declined this condition.

On November 17, 1989, Independent Counsel wrote the Attorney General to request formally that he be advised as to whether a CIPA § 6(e) affidavit would be filed and, if so, what classified information it would encompass, in order to allow Independent Counsel and defense counsel the opportunity to submit proposals regarding sanctions. On November 20, 1989, the District Court scheduled a status conference for November 22, 1989.

On November 21, 1989, the Department of Justice offered to disclose its proposed action for the following day, but only in secret. Independent Counsel again declined this offer. Accordingly, at the status conference on November 22, 1989 -- four months from the interruption of the Fernandez trial by the Department of Justice -- Independent Counsel was still unaware of whether the Attorney General intended to file a CIPA § 6(e) affidavit or what it would contain.

At the November 22, 1989, status conference, the Department of Justice filed a CIPA § 6(e) affidavit, the first such filing since CIPA's enactment. Despite prior urgings by Independent Counsel to limit the affidavit to the classified information pertaining to the United States programs in Costa Rica, the Attorney General also included in

his affidavit a bar to the publicly-known information regarding the existence and locations of the CIA stations and facilities in Latin America. Independent Counsel was required to respond to the affidavit. The District Court scheduled a status conference for two days later, November 24, 1989. The intervening day was Thanksgiving.

Later on November 22, 1989, Independent Counsel filed a brief that suggested sanctions other than dismissal of the indictment. On November 24, 1989, the District Court rejected these suggestions and dismissed the entire indictment with prejudice. Independent Counsel immediately filed a notice of appeal from the prior rulings as to the materiality of the classified information; the rejection of proposed substitutions for the classified information; and the imposition of excessive sanctions.

III. CIPA and the Independent Counsel

The North, Secord, and Fernandez prosecutions have provided the Office of Independent Counsel with an extensive opportunity to test and observe the CIPA statute in operation. Our experience with CIPA raises serious questions about the effectiveness of its procedures when an independent counsel has been appointed to investigate criminal activity

among important officials in the national security community. Prosecutions can be blocked by the Attorney General notwithstanding a possible conflict of interest because of his power to withhold classified evidence necessary for trial. These questions are difficult and deserve the most serious consideration from all who are concerned about preserving accountability in government.

The record in the Iran/Contra prosecutions demonstrates that with good-faith cooperation from the Justice Department and from the intelligence agencies, an independent counsel can bring some prosecutions against national security officials to trial and conviction. The North and Secord cases prove that a constructive interchange between the court, Independent Counsel and the executive agencies can both accomplish fair trials for defendants and effectively protect national security.

In contrast, the Fernandez prosecution is the clearest example of what can occur when this cooperative process is impaired by institutional self-interest. Disregarding a possible conflict of interest, the Attorney General relied exclusively upon the views of the intelligence community to end a prosecution within the legitimate authority of an independent counsel, which threatened to

expose others engaged in CIA activities. The affidavit of the Attorney General and the supporting affidavits from the intelligence agencies attempt to ritualize a one-sided view of a profound conflict between national security and law enforcement. They are no more than a rationalization for the abstract concept of deniability, without any recognition that the concept cannot be absolute -- that at some point, for some desirable objective, it could be sacrificed.

Accordingly, these affidavits do not discuss whether the prosecution of crime within the CIA is such an objective. Their factual analysis could almost have been made in a vacuum. They appear to take no account of previous Iran/Contra revelations, [redacted] Thus, the affidavits are unrealistic.

In particular, Fernandez reveals three specific areas of concern: the lack of facts supporting the Attorney General's decision; the abuse of CIPA's interlocutory appeal process by the Attorney General; and the lack of standards for the disclosure of classified information at trials of persons responsible for national security activities. Each of these areas is discussed in detail below.

A. The Nature of the "Secrets" - Deniability

The remainder of the report will focus exclusively upon the issue of deniability as raised in the Fernandez case relating to the governmental acknowledgment of the publicly known existence of certain CIA stations. The Attorney General justified his decision to bar disclosure of this information as necessary to preserve the host nations' freedom to deny this publicly-known fact. This is a simple issue. The Attorney General and the intelligence agencies conceded in their affidavits that the existence of these CIA stations and their locations are publicly known. The only question was whether acknowledgment of these facts during the Fernandez trial by government officers or through government documents would have created an unacceptable risk to our national security. We suggest that against the three-year widespread disclosure of truly sensitive information regarding these countries, the acknowledgment of these publicly known facts would barely add a drop to an already full bucket.

Moreover, President Reagan in November 1986 promised to reveal to the American people the truth about Iran/Contra. Revelations concerning the Iran/Contra activities of the national security agencies have already

exposed such grave questions of national credibility that they dwarf the breach of deniability that is now said to require the dismissal of Fernandez. Deceiving allies, deceiving Congress, diverting United States funds to unauthorized activities, as well as drawing allies to the edge of these activities, have all been extensively disclosed and acknowledged by documents and evidence previously released. The details of these activities have been recounted extensively in the Tower Commission Report, by Congressional hearings and reports, and finally by the North trial and its revelations of the interchanges between the head of this government and other heads of state concerning support of the Contras.

It is against this background of explicit candor that the Attorney General now flinches from government acknowledgment of the fact that CIA stations exist -- a risk said to be so grave that a prosecution of a former CIA station chief and the consequent revelations of three-year-old CIA operations must be blocked.

But for the gravity of the consequences, the Attorney General's determination and the process by which it was reached have almost comic aspects: the solemn convention of the intelligence agency heads assuring each other that

national security could not tolerate this additional acknowledgment, without including Independent Counsel, the officer responsible for the prosecution and who best understood its importance.

1. The Affidavit of the Attorney General

The absence of a sufficient justification in Attorney General Thornburgh's affidavit confirms the flawed decision-making process at work in Fernandez. (The Attorney General's CIPA § 6(e) affidavit and the supporting affidavits are attached as Exhibit E.) The affidavit is entirely dependent upon the supporting affidavits from the intelligence agencies, and on what the Attorney General learned while chairing a meeting of the heads of these agencies or their designated representatives. Whatever the source of the Attorney General's national security information, his affidavit is written as though disclosures about the Iran/Contra affair had never occurred. Its only concession to the reality of public awareness is that "there have been media stories concerning the purported existence of CIA stations," [redacted]. Thus, the Attorney General based his CIPA determination only upon the prior knowledge as to the stations themselves, thereby

[redacted]

disregarding the broad exposure of the facts as to more telling inter-country relationships.

Taking this narrow view of the problem, the Attorney General's affidavit concludes that the viability of many intelligence operations would be placed at "substantial risk" [redacted]

The Attorney General also concludes that acknowledgment of these known facts would "undermine this nation's credibility throughout the world." From this possible loss of credibility the Attorney General then predicts other dire consequences, including an adverse impact upon the Central American regional peace initiative. Notwithstanding Iran/Contra, can this credibility be restored by the non-acknowledgment of publicly known information? We suggest that any injury to this country's credibility flows from the support of illegal activities by former CIA officials, and not from their investigation and prosecution.

2. The Supporting Affidavits

Three senior intelligence officials filed affidavits in support of the Attorney General's CIPA

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[redacted]

affidavit in the Fernandez case. These affidavits are based largely on speculation about the effect government acknowledgment of the publicly known information at issue in Fernandez might have on United States intelligence-gathering capabilities. None of these assessments of risk are supported by hard data about the state of affairs in the countries at issue, about the sources of potential risk to United States interests, or about the measures, if any, that can be taken to compensate for the incremental risk of acknowledgment of the stations. Nor is there any effort to provide an accurate measure of the harm that might result from such a disclosure.

In his affidavit, the Director of Central Intelligence undertakes to explain why public disclosure of this classified information could cause serious damage to this country's national security. He makes clear that his views are those of the Bush Administration reached at meetings of the heads of agencies on July 21, 1989, and November 9, 1989.

The Director's view as to the dangers created by the specific information in question derives from a much broader concern. He states, "I continue to believe that there can be no official public acknowledgment of the

[redacted]

[redacted]

existence of our overseas facilities or disclosure of any of our intelligence activities without creating unacceptable risks [redacted] This is not a factual determination based on an assessment of the current situation in the countries in question, but a generalized statement of CIA policy. This view of the Agency's power to censor law enforcement activities casts an ominous shadow over future prosecutions of national security officials.

In asserting this policy, the Director appears to take no account of previous Iran/Contra disclosures except those that narrowly relate to CIA stations. [redacted] He generally explains the common practice of denying the existence of "any permanent CIA facilities," [redacted]

[redacted]

[redacted]

In making these far-reaching and speculative assessments, the Director makes no usable estimate of the incremental increase in danger [redacted] in an environment that has been already trampled with publicity, exposing far more intimate details [redacted] He cites no historical precedent for the supposed dangers he predicts and provides no estimate as to the likelihood that any of these dangers would materialize.

The supporting declaration of the CIA's Deputy Director for Operations concurs with the Director's speculations, but it adds few facts. His affidavit presents a generalized discussion of the reasons for policies [redacted]. The effects of three years of Iran/Contra exposure are not factored into his analysis. Even as to the evidence in question, the DDO discusses the loss of deniability as though the facts in question stood alone and apart from the Iran/Contra disclosures already made.

Of particular note is the DDO's argument that official acknowledgment of the stations at issue in Fernandez would "provide anti-United States groups with an excuse to

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organize violent demonstrations." Yet, the facts recited in the affidavit conflict with the DDO's suggestion that demonstrators and others hostile to the United States somehow need official confirmation of these facts to provoke their outbursts. The affidavit actually discloses that there already have been violent demonstrations, including open armed resistance of an anti-American nature for several years. Against these realities, the DDO merely states that this already violent opposition might also use the court-required acknowledgment of publicly known facts to rationalize a pattern of disruption already under way.

In addition, the DDO suggests that compliance with this order of the court could cause problems for intelligence activities. Again, only speculation is used to support this assessment of harm: [redacted]

The DDO supplies no historical precedent for these concerns. More importantly, he makes no effort to estimate concretely the claimed difference in risks [redacted] against the background of widely exposed inter-

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country relationships. Finally, the DDO reduces the problem to the bottom line -- namely, increased cost and increased difficulty for his agency. He does not address the question of why prosecution of crimes committed by CIA operatives should go unpunished to forestall speculative cost increases.

The final affidavit was submitted [redacted] It has only one paragraph relating to acknowledgment. That paragraph consists of unsupported speculation that official acknowledgment as distinguished from the publicly known facts would somehow jeopardize other United States programs.

3. Adequacy of the Affidavits

In the end, the affidavits filed in Fernandez are little more than the unsupported opinions of agency heads who apparently prefer to terminate a prosecution of a former important officer of one of these agencies to incurring the additional costs, if any, of the public governmental acknowledgment of publicly known facts. These officials do not address the principle that intelligence activities be conducted within the law or, at least, that important CIA officers not obstruct lawful investigations when their conduct is called into question.

[redacted]

[redacted]

The concerns raised by the affidavits of the Attorney General and the intelligence agency heads go far beyond the Fernandez case. These assessments of risk to national security are so generalized that they may be applied to the trials of other intelligence officers. So profound an exception to the rule of law deserves more thoughtful consideration than any of the affidavits disclose. Anglo-American law places its faith in proof of facts, and not in speculation. For centuries it has perfected the adversary process in which conclusions are measured against their supporting facts, and in which those expressing conclusions are subject to challenge and are expected to support them with something other than speculation.

B. The Use of a CIPA § 6(e) Affidavit to Compel an Appeal

The Attorney General undercuts the credibility of his own affidavit by suggesting that, notwithstanding the consequences he believes could result in serious damage to the national security, he might reconsider his decision to prohibit the release of the information barred in Fernandez if Judge Hilton's dismissal of the indictment is affirmed on appeal. The Attorney General's intent to reconsider his CIPA § 6(e) affidavit suggests that the Justice Department is

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deliberately using its power under CIPA to force the Independent Counsel to appeal, when the release of the classified information at issue is not a danger to national security, but is really an acceptable but undesirable inconvenience to the intelligence agencies.

In an attempt to justify this abuse of CIPA's appeal provisions, the Department of Justice and the intelligence agencies argue that the Fernandez Court was arbitrary in rejecting substitutions for the exact locations of stations and facilities in question. Independent Counsel agrees with them. We disagree, however, as to the desirability of an unnecessary appeal. Under the Ethics in Government Act, the authority to appeal the CIPA rulings of a federal district court in a criminal case is vested in an independent counsel. See United States v. Fernandez, No. 89-5804 (4th Cir. September 29, 1989). Any other interpretation of the Ethics Act or of CIPA would allow the intelligence agencies under investigation and the Attorney General to force repeated interruptions and delays in any prosecution with national security implications conducted by an independent counsel.

In evaluating the effect of such actions on the Independent Counsel's jurisdiction, it cannot be assumed that

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the motives of the superseded Attorney General will always be innocent. The Ethics in Government Act was enacted specifically to prevent the conflicts of interest that may make prosecution by the Attorney General of certain cases not only inappropriate in theory, but untrustworthy in fact. This ultimate concern of the Act can never be overlooked. Thus, the Attorney General's intentions in Fernandez, however benign, are not an excuse for a jurisdictional intrusion.

Why should the Attorney General not be allowed to force an appeal under CIPA before producing evidence? There are at least two reasons. First, appellate review of a trial court's materiality determinations requires an extensive appellate court study of the facts and the record rather than a discrete question of law. Such an exercise encumbers an appellate court and it is not welcome. Second, appellate courts properly extend district judges great latitude in evidentiary matters because the administration of justice would be entangled if a trial court's pretrial and trial rulings on materiality were continually subject to interlocutory review. CIPA provides one of the few exceptions to the general rule against interlocutory review, but it is not an exception to be abused by a prosecutor when excessive resort to appeals would inappropriately burden the

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appellate court and minimize the prosecutor's likelihood of success. More importantly, if disclosure of the evidence in question is not truly seriously damaging to the national security, it is an abuse of power to force the Independent Counsel and the defendant through the appellate process just to vindicate the Attorney General's view that the trial judge was wrong.

In Fernandez, the prosecution was confronted with Court rulings requiring the exposure of two different types of information. The first category required the exposure of [redacted] certain stations and facilities. The second category concerns government programs that the defendant claimed supported his position as to what he said about the North/Secord airstrip in Costa Rica. Substitutions were proposed by the prosecution as to both categories and they were summarily rejected.

Because defendant's claims as to the materiality of the information in category two -- the Costa Rican programs -- was more tenuous, some possibility remained that the trial would go forward if the intelligence agencies had been willing to declassify information in category one -- the existence of stations and facilities. This would have eliminated any need for an appeal. On the other hand, if

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category two resulted in a dismissal of the entire indictment, an appeal would have been limited to this one area of materiality. Thus, the Court of Appeals would not have been required to undertake a review as to the materiality of two separate categories, leaving it free to focus on a record dedicated to one well-defined issue.

Finally, although the courts may not review the government's assertion as to the national security implications of the evidence in question, courts -- which day in and day out assess the overstatements of the parties before them -- may be expected to react at least subconsciously to contentions of secrecy based upon facts that are known publicly. Any loss of credibility in the argument of one category is likely to affect others. Having been through lengthy CIPA litigation in the North case, it is the firm view of this office that some of the agencies' extreme contentions of national security interests led not only to the rejection of those specific contentions by Judge Gesell, but also impaired the credibility of the prosecution in defending more valid contentions. This led ultimately to greater exposure of classified information than might otherwise have been the case in North, and ultimately threatened the continuation of the trial itself.

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[redacted]

Time, delay and expense have different impacts on the defendant, this office, the intelligence agencies and the Department of Justice. Confronted with giving up information they prefer not to acknowledge, the agencies have nothing to lose by exhausting every possible procedural alternative before authorizing disclosure of classified information deemed essential to a fair trial. On the other hand, a criminal defendant faces the expense of continued litigation, and this office, which is a temporary office being operated at substantial expense, is extended to complete litigation it has undertaken. The unfairness of this wasteful approach to protecting government secrets is not lost on the courts. In the end, the agencies' indifference to the costs of such a strategy endangers the success of the prosecution. It is unsound to have an independent counsel and a defendant at the mercy of such an unregulated, subjective, at times ritualistic and patronizing procedure.

C. Standards

Independent Counsel would not request relief from Congress simply to gain an advantage in a single case or even all of the cases remaining for his prosecution. The concern which prompts this report is that the generalized views and policies expressed by the intelligence community and the

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[redacted]

Attorney General could jeopardize any prosecution of other government officers heavily involved with classified information. The agencies' actions have created an unacceptable enclave that is free from the rule of law.

Even during the violence of feudal times, the scholars and jurists of English law refined the concept that no person was above the law or beyond its reach. In the thirteenth century, Bracton, a Justice of the King's Bench and one of the first great commentators on English law, said, "The King is beneath no man, but beneath God and the law, because the law maketh the king." The Lord Chief Justice of England defied King James I by reminding him of this principle. King Charles I was beheaded for ignoring it. The Declaration of Independence recites as a grievance against King George III that he withdrew from the colonists their rights to English law. John Adams, one of the drafters of the Declaration of Independence, incorporated in the Constitution of the Commonwealth of Massachusetts the concluding objective "to the end that it may be a government of laws instead of men." Since then, two presidents have been subject to impeachment proceedings and one vice-president has been tried for treason. Somehow, it mocks this history to suggest that the CIA former chief of station for

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Costa Rica may not be tried for giving false statements and obstructing justice.

Ultimately, many secrets are expendable -- they will be divulged if the benefit derived is great enough. The Iran/Contra prosecutions make evident that we can no longer evade a fundamental question: to what priority is law enforcement entitled in the hierarchy governing America's willingness to divulge secrets? The Attorney General's actions in Fernandez suggest that he believes the answer is that prosecutorial interests are entitled to little weight, and that we must reconcile ourselves to near-zero risk when prosecuting important government officials.

Equality before the law, the ultimate preservation of freedom, and the very nature of the rule of law strongly counsel otherwise. These are, after all, the principles of democratic government which lie behind the prosecution of corrupt, unauthorized, and illegal actions taken by government officials. The Ethics in Government Act gives legal force to those principles. Accountability of government officials, to their superiors, to the Congress, and before the law is the animating force behind any prosecution arising under the Act. The prosecutions are not just designed to make individuals accountable for criminal

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acts, they are designed to make individuals accountable for acts that corrupt government or corrupt the individuals who occupy positions of enormous power. That is a very special form of accountability, one accorded insufficient weight in the Attorney General's decision.

Release of the secrets at issue in the Fernandez case should differ not in kind, nor necessarily in degree, from the release of other national security secrets in the service of national security objectives or counter-terrorist objectives or presidential political objectives. When military, foreign policy, or counter-terrorism objectives are at stake, information is divulged. It may be that national security concerns, gripping and important as they are, in time diminish awareness of the central features of our democracy which these national security activities protect.

A far more crucial point, however, which minimizes the chilling effects on intelligence-gathering conjured by the Administration's affidavits, is entirely overlooked. To the extent that individuals and states would be reluctant to cooperate with the American intelligence community because aspects of their relationship might be revealed, they have long been on notice that American law allows prosecution of illegal and unauthorized activities. And, had they not fully

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understood those implications, the indictments in the Iran/Contra scandal, and Fernandez' in particular, make abundantly clear that such laws have bite.

Without some standards there is an inappropriate framework for review of the decision of the Attorney General. The Attorney General ought to be required to use standards drawn from experience, to compare the measurable harm resulting from the release of information about intelligence sources and methods in well known counter-terrorist activities, for example, to the minimal harm of disclosure in this case.

It may be that in the case of Department of Justice prosecutions the need for standards is less apparent. In those prosecutions, the Attorney General has the last word. He can preserve the rule of law if he sees fit to do so, notwithstanding the claims of the intelligence agencies. He also is required by CIPA to report any failure to prosecute because of classified information problems. He does not have a similar duty in a case where the prosecution is controlled by independent counsel and is dismissed by a court.

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[redacted]

At least, in cases prosecuted by an independent counsel, a decision to file an affidavit withholding material information should be based upon a record which includes the following factors:

(1) The affidavit presents a basis in fact demonstrating the danger said to excuse the production of evidence. This would include:

a) an historical analog;

b) the extent of existing public knowledge of the information -- not just an acknowledgment that there is some public knowledge -- but a distinction between cases where there is little public knowledge and when the public knowledge is massive;

c) the extent to which other countries, including hostile countries, already have knowledge of the information at issue;

d) the background relationship between the countries in question. [redacted]

[redacted]

[redacted]

(2) Factual support for incremental increase in danger beyond that already existing:

a) Has anti-American sentiment already been manifested by violence or military disorder?

b) What will be the incremental effect of the new information against the background of other information regarding the countries' relationship with the United States and the existing disorder?

(3) What is the extent of effort required by the intelligence agency to offset the ill effects, if any, of the new information?

a) Can it be overcome by increased diplomatic activity?

b) Is there some offsetting favor which the United States can extend?

c) Can it be overcome by increased expenditures?

d) Can it be overcome by increased personnel?

e) To what extent is the problem caused by the release of the new information any different from other problems which must occur regularly

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[redacted]

[redacted]

f) What is there about this particular information that prevents its being overcome in the same fashion as ordinary operating [redacted] problems are overcome?

(4) In the scale of national security activities, how grave a crisis would be required to justify the release of the information in question?

(5) In terms of financial considerations, how valuable an asset of the United States would be sacrificed in order to preserve the questioned information?

Conclusion

Independent Counsel recognizes that during the past three years he has asked for heavy sacrifices from the intelligence agencies, including massive requests for documents, and massive requests for declassification for different purposes. The investigation and the prosecution could not have proceeded without this help. The Attorney General has similarly extended extensive help to the investigation. Nothing in this report is intended to reflect upon the motives of any party to the controversy. The question is one of policy and judgment. Each participant to the controversy, including Independent Counsel, may have views which are narrow or agency-centered. That is the

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reason we believe it is appropriate to report to Congress and invite its consideration.

Respectfully submitted,

Lawrence E. Walsh
Independent Counsel

December 11, 1989

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THIRD INTERIM REPORT TO CONGRESS
BY INDEPENDENT COUNSEL FOR IRAN/CONTRA MATTERS

June 25, 1992

The Independent Counsel statute provides that an "independent counsel appointed under this chapter may make public from time to time, and shall send to the Congress statements or reports on the activities of such independent counsel."

Under the governing statute, Independent Counsel's responsibilities are threefold. First, he has an investigative role, 28 U. S. C. Section 594. Second, he has a prosecutorial role, 28 U. S. C. Section 594. Third, he has a reporting role, 28 U. S. C. Section 595.

The purpose of this report is to inform the Congress of the status of Independent Counsel's investigation and prosecutions in the Iran/Contra matters.

Status of the Investigation

The criminal investigation of Iran/Contra is in its final phase. We are attempting to determine whether officials at the highest level of government, acting individually or in concert, sought to obstruct official inquiries into the Iran Initiative by the Tower Commission, the Congress and Independent Counsel by withholding notes, documents and other information, by lying, and by supplying a false account of the 1985 arms sales from Israeli stocks and their replenishment by the United States.

The indictment of former Defense Secretary Weinberger by the grand jury on June 16, 1992, stemmed from that investigation.

A copy of the Weinberger indictment is attached. Independent Counsel has yet to determine whether additional proposed indictments will be presented to a Grand Jury. That investigation should be completed this summer.

While pursuing the final phase of the investigation, the Office of Independent Counsel will proceed with the trial of three pending cases, United States v. Clair E. George, United States v. Duane R. Clarridge, and United States v. Caspar W. Weinberger. The George case is set for trial on July 13, 1992, before U.S. District Judge Royce Lamberth. No trial date has been set for the Clarridge case, but U.S. District Judge Harold Greene has stated that he hopes the trial can be held in October 1992. U.S. District Judge Thomas Hogan has set a November 2, 1992, trial date for the Weinberger case. In addition, Independent Counsel has been prepared to seek leave to appeal to the Supreme Court the reversal of the conviction of John M. Poindexter, but is awaiting an appeals court ruling on Poindexter's petition for rehearing in that Court.

Independent Counsel is sensitive to concerns expressed by Members of Congress and others as to the length and the resulting cost of the investigation. The investigation has continued for five and one-half years and has cost $31.4 million. This highly complex investigation posed unique problems and circumstances that stretched out our work, which I will explain in more detail later.

To speed up the completion of our investigation, I announced last December the appointment of Craig A. Gillen as Deputy Independent Counsel to direct the continuing investigation

and the remaining trial work of the office, while I undertook to complete the final report of our long period of activity. I have nevertheless maintained overall responsibility for the supervision and direction of prosecutorial matters, spending one third of my time in Washington and returning to Washington full time in April for the final consideration of the Weinberger indictment. Much of the report has been drafted, but in order to complete the final phase of our investigation, and particularly while Mr. Gillen is trying cases in court, I shall continue full time in Washington where we hope to complete our investigative work by the end of this summer.

Length of Investigation

In evaluating the cost and time involved in the effort of Independent Counsel to carry out his assignment by the Appointing Panel, it is important to understand that the Iran/Contra matters posed a number of highly complicated circumstances for a prosecutor. The Iran/Contra operations were intended by the Reagan Administration to remain hidden. Because they were conducted in tandem with or in the course of covert activities, once exposed, they could not be readily explored in open court because of the national security claims.

The operations were executed by high Reagan Administration officials in support of presidential foreign policy objectives. They occurred in a broad geographic setting over a period of years. Their investigation required a thorough sifting

of hundreds of thousands of documents from some of the most sophisticated and secretive agencies of government. And, although there were many witnesses to various aspects of these operations, the most central figures were not cooperative. There were few government officers who volunteered information willingly.

It was imperative for Independent Counsel to focus first on the facts that might be the subject of immunized testimony, including the diversion of funds from the proceeds of the Iranian arms sales to assist the Contras. It was necessary to gather as much material as possible before Congress granted immunity to the most central figures in the affair. After immunity was granted, it was necessary to shield our potential prosecutions from contamination by the highly publicized congressional testimony of Oliver L. North, Poindexter and others who testified under immunity grants.

Once the first major indictment was brought in March 1988, Independent Counsel turned to trial work. In the North case alone, 108 pre-trial motions were filed, thirty-two of which challenged the validity of charges in the 23-count indictment brought against North, Poindexter, Richard Secord, and Albert Hakim.

The decision by U.S. District Judge Gerhard Gesell to sever the four defendants in the case to preserve the right of each of the defendants to use the immunized testimony of others to exculpate himself necessitated separate trials and added more than a year to the anticipated schedule. The immunity issues ultimately

brought about the reversal of North and Poindexter's convictions on appeal.

Classified information problems have also complicated Independent Counsel's prosecutions and consumed enormous time and energy. Every line of every page of the thousands of pages of classified documents that might be used in trial by either the prosecution or the defense has had to undergo review by a group of declassification experts from several agencies. Claims of national security led to the dismissal of the central conspiracy charge against North, Poindexter, Secord and Hakim. Attorney General Thornburgh's refusal to declassify publicly known but officially secret information forced the dismissal of the government's entire case against former CIA Costa Rican station chief Joseph Fernandez -- and more than a year's litigation was wasted. I have previously reported to Congress at greater length on these problems.

Crimes Charged and Tried

Independent Counsel has not been able to prosecute the basic operational crimes committed in the course of the Iran/Contra affair due to national security claims. For instance, Count One in the North-Poindexter-Secord-Hakim indictment was dismissed due to claims that material information could not be declassified. It charged a conspiracy to defraud the United States by obstructing congressional oversight; by illegally supporting the Nicaraguan Contras; by depriving the government of the honest and faithful services of employees free from conflicts of interest, corruption

and self-dealing; and by exploiting and corrupting for their own purposes a government initiative involving the sale of arms to Iran rather than pursuing solely the government objectives of the initiative, including the release of hostages in Lebanon.

Independent Counsel has been able to prosecute the crimes committed in the course of the Iran/Contra cover-up. These have including lying to and withholding information from Congress, lying to other official investigations, and withholding and destroying documents.

Criminal charges have been brought against 14 persons in three venues, including three cases that have not yet come to trial. Ten convictions have been obtained. The North and Poindexter convictions were reversed on appeal. The Fernandez case never came to trial due to classified information problems.

The Office of Independent Counsel could not complete its work without questioning all significant witnesses and pursuing all important leads related to the mandate issued by the Appointing Panel, a copy of which is attached. Because of the need to try North and Poindexter separately, those two principals did not become available for questioning until mid-1990.

Since then, the continuing investigation was fueled by newly discovered documents, including the personal notes of key officials, CIA cables and tapes, and other records previously withheld from Independent Counsel and other investigating bodies. These were obtained by renewed emphasis on the fulfillment of longstanding document requests, originally made in 1987 to the

National Security Agency, the National Security Council, the CIA, the White House, the Office of the Vice President, and the State and Defense Departments. Also of critical importance were changes in witness testimony.

Conclusion

In the past two years, the continuing investigation has developed new and disturbing evidence that made it necessary to re-interview many of the witnesses first questioned in 1987. This was not merely a clean-up chore -- it has provided a significant shift in our understanding of which Administration officials had knowledge of Iran/Contra, who participated in its cover-up, and which areas required far more scrutiny than we previously believed.

It is not a crime to deceive the American public, as high officials in the Reagan Administration did for two years while conducting the Iran and Contra operations. But it is a crime to mislead, deceive and lie to Congress when, in fulfilling its legitimate oversight role, the Congress seeks to learn whether Administration officials are conducting the nation's business in accordance with the law.

Respectfully submitted,



LAWRENCE E. WALSH
Independent Counsel

Attachments: Appointing Mandate
Weinberger Indictment
Office Fact Sheet

FOURTH INTERIM REPORT TO CONGRESS

BY LAWRENCE E. WALSH,

INDEPENDENT COUNSEL FOR IRAN/CONTRA MATTERS

February 8, 1993

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FOURTH INTERIM REPORT TO CONGRESS
BY INDEPENDENT COUNSEL FOR IRAN/CONTRA MATTERS

I. INTRODUCTION

The Independent Counsel statute provides that an "independent counsel appointed under this chapter may make public from time to time, and shall send to the Congress statements or reports on the activities of such independent counsel."[1/] This Interim Report to Congress is submitted in response to President Bush's pardon of former Secretary of Defense Caspar W. Weinberger and five other Iran/Contra defendants.

In our last Interim Report on June 25, 1992, we informed Congress that our investigation would be concluded by the end of the summer. In September, we announced that the active investigation was substantially complete except for such information as might be developed from the remaining trials. At that time, we had three trials to complete: Clair E. George, former deputy director for operations of the CIA, scheduled for October 19, 1992; Caspar W. Weinberger, former secretary of defense, scheduled for January 5, 1993; and Duane R. Clarridge, a former high-ranking CIA officer, which was later scheduled for March 15, 1993.

1/ 28 U.S.C. § 595(a) (pre-1987 amendment version, which applies to independent counsel appointed before December 15, 1987).

The trial of Clair George was completed on December 9, 1992. He was convicted of perjury and making false statements to Congress.

President Bush pardoned Weinberger on December 24, 1992, less than two weeks prior his trial. At that time, the President also pardoned Clarridge, who was awaiting trial in March 1993, and four others who had previously been convicted of crimes: George; Robert C. McFarlane, former national security adviser to the President, who had pleaded guilty to four misdemeanors; Alan D. Fiers, Jr., former head of the CIA task force on Central America, who had pleaded guilty to two misdemeanors; and Elliott Abrams, former assistant secretary of state for inter-American affairs, who had pleaded guilty to two misdemeanors.

Among the justifications given by President Bush for the pardons were that those pardoned had acted out of patriotic motives, that the pardons would not "prevent full disclosure of some new key fact to the American people," and that granting the pardons was consistent with the "healing tradition" of pardons issued by other presidents. The President also said that he was disturbed that Independent Counsel had "criminaliz[ed]" policy disagreements between the Executive Branch and the Congress.[2/]

President Bush's justifications for the pardon challenge both the significance and the propriety of the Independent

[2/] The President's pardon proclamation is attached as Tab 1.

Counsel's prosecution of Weinberger. Having been given no opportunity by President Bush to present the facts of the Weinberger prosecution before the pardons were granted, the Independent Counsel submits this report to correct President Bush's misconceptions by setting out in detail the charges brought against Weinberger and the evidence supporting those charges.[1/]

This report demonstrates that Weinberger faced prosecution for serious crimes rather than policy differences, and shows that President Bush's pardon thwarted the public airing of new and disturbing facts about the actions of Weinberger and other senior Executive Branch officials in the Iran/Contra affair. While respecting the President's constitutional right to pardon, the report concludes by addressing the misuse of this power to pardon in advance of trial a former colleague whose prosecution arose out of events in which the President himself participated, a use of the pardon power that diverges sharply and inappropriately from the traditional use of the pardon power in this country.

1/ Some of the evidence that would have been presented at the trial cannot be included here because of grand jury secrecy provisions. A more detailed account will be given in the Final Report of Independent Counsel.

II. EVENTS LEADING UP TO THE DISCOVERY OF WEINBERGER'S NOTES

Beginning in 1987, congressional investigators and the Office of Independent Counsel (OIC) repeatedly requested notes, calendars, telephone logs, diaries and other materials relevant to the Iran/Contra matter from Weinberger and other high Administration officials. During this period, Weinberger produced typewritten notes from only one meeting, none of his handwritten meeting notes and none of his handwritten daily diary notes. It was not until the late summer of 1990, as the OIC was attempting to conclude its investigation, that investigators obtained a document suggesting that the former defense secretary had withheld relevant notes.

According to an August 7, 1987 note by former Secretary of State George Shultz's executive assistant, M. Charles Hill, Shultz told Hill that "Cap takes notes but never referred to them so never had to cough them up."[1/] This reference led investigators to reexamine earlier statements Weinberger had made about his note-taking practices. In an April 7, 1988 interview with OIC investigators, Weinberger referred to having "a habit of making notes on any piece of paper he could get his hands on."[2/]

[1/] Tab 2.

[2/] FBI Record of Interview, at 2 (Apr. 7, 1988) (Interview Of Caspar W. Weinberger). Tab 3.

In late August 1990, Associate Independent Counsel Craig Gillen attempted to arrange an interview with Weinberger by telephoning his secretary.[9] Weinberger did not return Gillen's call. On September 11, 1990, a Grand Jury subpoena ordering Weinberger to appear and produce relevant documents, including any handwritten notes, was served on Weinberger at his offices in New York.[10]

On September 13, 1990, Weinberger's attorney, William P. Rogers, told Gillen that Weinberger had assured him that he had previously turned over his notes to the congressional committees investigating the Iran/Contra matter or to the Library of Congress. Subsequently, at Rogers' request, Gillen agreed that Weinberger would be interviewed at the Office of Independent Counsel rather than testifying before the Grand Jury.

On September 28, 1990, in arranging the interview, Gillen told Rogers that during a prior interview Weinberger had stated that he wrote notes on whatever pieces of paper might be at hand. Rogers stated that Weinberger was angry about being accused of failing to turn his notes over to Congress or to the OIC. Gillen explained that while the Independent Counsel's office did not intend to be accusatory, two sources of information -- (1) Weinberger's previous

[9] Gillen became Deputy Independent Counsel on December 6, 1991.

[10] Tab 4.

interview with Independent Counsel's office and (2) a newly discovered document[8/] -- indicated that Weinberger had not turned over his relevant notes to Congress.

On October 10, 1990, Weinberger, accompanied by Rogers, was interviewed by OIC attorneys in the presence of an FBI Special Agent. At that time, Rogers asked to see a record of the April 7, 1988 interview which Gillen had previously discussed with him. After reviewing the FBI report, Weinberger said that he disagreed with that portion of the report that stated: "he had a habit of making notes on any piece of paper he could get his hands on." Weinberger objected that the statement was "misleading" because it implied that it was his habit to make notes throughout his seven years as secretary of defense, which was not the case. Weinberger stated that during his first year as secretary of defense he had taken notes on the backs of pages in his briefing books. He said his secretaries initially had saved these notes for him so that he could dictate memoranda from them, but discontinued that practice when it became apparent that he would not have time to dictate memoranda. Weinberger then stated that after his first year in office he did not regularly take notes at meetings or make a record of meetings when he returned to his office;[9/] he did not take notes of

[8/] The August 7, 1987 Hill note.

[9/] At the beginning of the interview, Weinberger produced an October 1, 1990 memo by Kay Leisz, his executive assistant,
(continued...)

his phone calls; and he had not deliberately withheld anything from Iran/Contra investigators. During the interview, Gillen told Weinberger that he had a document, contemporaneously written by someone Weinberger would consider credible, which said that Weinberger had withheld some of his relevant Iran/Contra notes.[10/] Weinberger vehemently denied the allegation and stated he was distrustful of the author and his motivations. Because of Weinberger's criticisms of the earlier FBI report, Rogers asked to review the FBI report of the current interview.[11/]

The FBI Special Agent dictated his interview report on the day of the interview. Weinberger and Rogers were permitted to review it when Weinberger came to the Office of Independent Counsel for another interview on December 3, 1990. Both Rogers and Weinberger complimented its accuracy and thoroughness and contrasted its accuracy with the FBI report of the 1988 interview.

Between the October and December 1990 interviews, the OIC obtained Weinberger's permission to review his papers at the Library of Congress. Classified documents were listed

9/ (...continued)
regarding the OIC's request for Weinberger notes or diaries. Leisz repeats Weinberger's assertion that, other than notes from briefing books during his first year as secretary of defense, no other notes existed. Tab 5.

10/ Gillen was referring to the August 7, 1987 Hill note.

11/ This account of the October 10, 1990 interview of Weinberger is based upon the FBI Record of Interview. Tab 6.

separately by subject in the Library's index to the Weinberger collection. Assuming that any documents relating to Iran/Contra were classified[12/] and relying on Weinberger's statements that the few notes he took were scribbled on the backs and margins of documents in his briefing books, OIC investigators asked where such materials would be located. The investigators were directed to the classified subject list in the index.[13/] They found no notes.

Several months later, when OIC investigators returned to the Library of Congress, they saw the entire index. They found that literally thousands of pages of diary and meeting notes had been stored improperly in the unclassified section of the collection.[14/]

12/ Almost all high-level documents regarding the Iran arms sales and the Reagan Administration's efforts to obtain foreign support for the Contras are highly classified.

13/ In what may have been a misunderstanding, the OIC investigators did not believe they were at liberty to examine other parts of the index and therefore did not see the reference to diary and meeting notes in the description of unclassified material. The OIC undertook this review in late 1990, not looking to prove that Weinberger had lied. Its investigative premise was that he had told the truth: the few notes taken by him that would be relevant to Iran/Contra would be those he scribbled on the backs and margins of documents in his briefing books.

14/ That the OIC did not immediately find Weinberger's notes does not diminish the falsity of his statements in the October 10, 1990 interview. The delay in finding the notes was due in part to the OIC's reliance on Weinberger's false statements that no such notes existed.

It would be difficult to overstate the value of Weinberger's notes as a guide to the Iran arms sales and the views of the highest officials regarding those sales.[15/] The notes disclose important evidence that those officials falsely sought to minimize their knowledge of and their participation in key elements of the Iran transactions, particularly the 1985 sales through Israel, which they feared violated the congressional notification requirements of the Arms Export Control Act.

In November 1986, when it was revealed that the United States had covertly sold arms to Iran without congressional notification and in the face of a ban on such sales, Congress and the American public expressed outrage. They wanted to know what had happened and who in the Administration knew what and when. In sworn testimony given in December 1986 and repeated thereafter, Weinberger falsely minimized his own knowledge of the Iran arms sales. He concealed the existence of his contemporaneous notes that contradicted his testimony and contained important evidence about the arms sales. He failed to produce his notes to Congress despite specific and repeated requests.

Weinberger's notes revealed, among other things, that contrary to his sworn testimony, Weinberger knew in advance that U.S. arms were to be shipped to Iran through Israel in

15/ Relevant excerpts from Weinberger's handwritten notes appear in the attached appendix.

November 1985 without congressional notification, in an effort to obtain the release of U.S. hostages, and that Israel expected the United States to replenish the weapons shipped to Iran. Weinberger's notes also revealed that, contrary to his sworn testimony, he knew that Saudi Arabia was secretly providing $25 million in assistance to the Contras during a ban on U.S. aid.

III. INDEPENDENT COUNSEL'S PRE-INDICTMENT DISCUSSIONS WITH WEINBERGER AND HIS COUNSEL

On March 30, 1992, the Office of Independent Counsel notified Weinberger that he was a target of a federal Grand Jury investigation of possible crimes, including obstruction, false statements, and perjury. The Independent Counsel invited his voluntary testimony before that Grand Jury. Although Weinberger ultimately declined to appear before the Grand Jury or make any statements before an FBI Agent, he did, at his request, make his own presentation to Independent Counsel and other OIC attorneys on May 12, 1992. In addition, over a two-and-one-half-month period, OIC attorneys met frequently and at great length with Weinberger's counsel,[16/] who made detailed presentations and arguments in an effort to prevent indictment.[17/]

After Weinberger's indictment on June 16, 1992, and again after he was pardoned by President Bush on December 24,

16/ In April 1992 Rogers withdrew as counsel. Thereafter, Weinberger was represented by Robert Bennett, Carl Rauh and William P. Clark.

17/ Independent Counsel recognized that Weinberger had a distinguished public career and that he had strongly opposed the Iran arms sales. OIC representatives met with Weinberger's attorneys on at least twelve separate occasions between April 1 and May 13, 1992. After Weinberger's counsel requested additional time to work with their client, Independent Counsel agreed not to present a proposed Weinberger indictment to the special Iran/Contra Grand Jury whose two-year term expired on May 15, 1992. Thereafter, Independent Counsel had a meeting on June 2, 1992 with the Weinberger attorneys to permit a final submission. Subsequently an indictment was presented to and returned by a different Grand Jury.

1992, Weinberger made statements to the media charging that Independent Counsel had sought, by threat of prosecution, to extort false testimony from Weinberger implicating former President Reagan in criminal activity. To the contrary, Independent Counsel, in exhaustive efforts to resolve this matter, asked Weinberger to provide whatever complete and truthful information he possessed on a range of topics, including positions that Reagan Administration officials took before Congress and the public in November 1986.[18/] On the basis of its own information, OIC found Weinberger's presentations unconvincing. When Weinberger and his counsel asserted that he had no information to provide that went beyond his previous statements, when he claimed that his note-taking was so habitual that he did it mindlessly like brushing his teeth, when he consistently denied guilt, and when he continued to deny present knowledge of what is recorded in his own handwritten diary and meeting notes, Independent Counsel decided to present an indictment to the Grand Jury.

[18/] Throughout this process, while Independent Counsel invited a plea offer and proffer of testimony, he did not go beyond that. Weinberger's counsel attempted to find a solution short of a plea but Weinberger was never receptive to a plea negotiation. Accordingly, notwithstanding hours of discussion, and although Independent Counsel expressed a willingness to consider a misdemeanor offer, there was no meaningful negotiation. Independent Counsel also never asked that Weinberger issue any particular statement or give any particular testimony. The only proposed statement ever drafted for Weinberger's use was prepared by his own counsel and offered by them for Independent Counsel's consideration.

IV. THE WEINBERGER INDICTMENT AND THE CONTROVERSY ABOUT COUNT 1

The original indictment of Weinberger returned by the Grand Jury on June 16, 1992 contained five felony counts charging him with: Count 1, obstruction of a congressional investigation by concealing and withholding relevant notes; Count 2, making false statements to Congress regarding his knowledge of Saudi Arabia's funding of the Contras; Count 3, perjury before Congress about his knowledge of the planned shipment of HAWK missiles to Iran in November 1985; Count 4, perjury before Congress about his knowledge of the issue of replenishing missiles that Israel had shipped to Iran; and Count 5, false statements to the Office of Independent Counsel and the FBI regarding his note-taking.[12/]

The trial court dismissed the original Count 1 on September 29, 1992. The proceedings to replace it drew attention during the closing days of the presidential election campaign and were a possible factor leading to the pardon. Accordingly, the history of Count 1 is included as part of this report.

Count 1 charged Weinberger with concealing more than 2,000 pages of notes from congressional investigators by (1) withholding the notes despite specific requests from Congress for all his "notes," "diaries" and other documents relating to the Iran-Contra affair and (2) concealing them from the

12/ Indictment of Caspar W. Weinberger, No. 92-0235-TFH (June 16, 1992) (first indictment). Tab 7.

committees by lying to congressional investigators about the existence of such notes in a March 11, 1987 interview and a June 17, 1987 deposition.

Based upon the decision of the United States Court of Appeals for the District of Columbia Circuit in United States v. Poindexter, Weinberger moved to dismiss Count 1.[20/] Although Poindexter held only that lying to Congress was not an obstruction, and Count 1 charged Weinberger with obstructing Congress not only by lying but also by

20/ Former National Security Adviser John M. Poindexter was convicted of five felonies, including obstructing Congress by lying in a briefing to Congress about the role of United States Government officials in the 1985 arms shipments to Iran. United States v. Poindexter, 951 F.2d 369, 371 (D.C. Cir. 1991), cert. denied 113 S. Ct. 656 (1992). The obstruction statute outlaws, among other things, "corruptly" "obstruct[ing]" or "imped[ing]" a congressional inquiry. 18 U.S.C. § 1505.

The Court of Appeals reversed the obstruction conviction, ruling that the term "corruptly" was unconstitutionally vague as applied to mere lying to Congress. 951 F.2d at 386. The Court began its analysis by observing that the term "corruptly" is vague on its face, but that the legislative history or application of the statute might provide a "narrowing gloss" on the term that would pass constitutional muster. Id. at 378-79. The Court ultimately determined that the legislative history and the case law interpreting 18 U.S.C. § 1505, and its obstruction of justice counterpart § 1503, suggested that "corruptly" be read in its transitive form, i.e., to corrupt another. Id. at 379, 385-86. Because Poindexter had lied to Congress himself, rather than causing another to lie, the Court ruled that the statute was unconstitutionally vague as applied to his conduct. Id. at 386. Poindexter recognized as "plausible," however, the argument that concealing or destroying documents might be "corrupt" under § 1505 even absent transitive conduct. Id. at 384; cf. United States v. Rasheed, 663 F.2d 843 (9th Cir. 1981) (holding that the failure to produce documents is an obstruction), cert. denied, 454 U.S. 1157 (1982); United States v. Walasek, 527 F.2d 676 (3d Cir. 1975) (holding that altering material documents is an obstruction).

withholding his relevant notes, the district court agreed with Weinberger and dismissed Count 1 on September 29, 1992.[21/]

Rather than appeal that decision, Independent Counsel sought a new indictment of Weinberger, charging him under 18 U.S.C. § 1001 with making a false statement to Congress based upon precisely the same facts that had provided the basis for the dismissed count. Although the statute of limitations had by now run on the false statement, 18 U.S.C. § 3288 provides that when a count is dismissed for "any reason," the prosecution may bring a new indictment based upon the same facts within six months of the dismissal. Because of the tight pre-trial discovery and classified-information review schedule established by the district court, the Independent Counsel and the defense needed a final indictment as soon as possible. After a brief delay attributable to the substitution of lead trial counsel (Weinberger had moved to disqualify Gillen, who voluntarily stepped aside), the Independent Counsel presented evidence to the Grand Jury in

21/ United States v. Weinberger, Crim. No. 92-0235-TFH, Memorandum Opinion and Pretrial Order No. 6, at 4-5 (D.D.C. Sept. 29, 1992).

late October.[22] On October 30, 1992, the Grand Jury returned the new indictment.[23]

Weinberger subsequently moved to dismiss the new indictment on statute of limitation grounds. Although numerous courts have held that reindictment is proper under § 3288 as long as it is based upon "approximately the same facts" as the initial indictment,[24] the district court

[22] Gillen announced at the October 9, 1992 status call that he was voluntarily recusing himself. Transcript of October 9, 1992 Status Call, at 3-4. New lead counsel James J. Brosnahan was appointed on October 15, 1992, and at a status call on October 22 he sought to postpone one week the November 2 deadline for production of case-in-chief documents, witness statements, and exculpatory materials. Transcript of October 22, 1992 Status Call, at 9. Weinberger's counsel objected to any delay, and asked to have the supplemental indictment "as soon as we can get it." Id. at 3. The Court denied Brosnahan's request to postpone the deadline. It ruled that in order to ensure a January 5, 1993 trial, the pretrial schedule would stand except that the Independent Counsel could supplement its November 2, 1992 production with a limited number of documents. Id. at 13.

In response to the Court's questioning about the timing of the supplemental indictment, Brosnahan reaffirmed earlier assurances to the Court by Gillen that the indictment would be filed by the end of October (before the November 2 production) to accommodate the strict schedule set by the Court. Id. at 3-4. Independent Counsel expected that the indictment would be in final form before the production of government case-in-chief documents to the defense, due November 2, 1992. Otherwise, defense counsel could not be required to commence the evaluation of their need for classified information and thus could have forced a delay in the pre-trial classified information hearings, set for early December 1992.

[23] Indictment of Caspar W. Weinberger, No. 92-0416-TFH (Oct. 30, 1992) (second indictment). Tab 8.

[24] See, e.g., Mende v. United States, 282 F.2d 881, 883 (9th Cir. 1960), cert. denied, 364 U.S. 933 (1961); United States v. Italiano, 894 F.2d 1280, 1283 (11th Cir.), cert. denied, (continued...)

agreed with Weinberger and dismissed the new indictment on December 11, 1992, even though the very same false statements alleged had been set forth in the first indictment.[25] At the time of President Bush's pardon of Weinberger, the Independent Counsel had not yet decided whether to appeal that ruling.

A public controversy arose from a misunderstanding of both the timing of the supplemental indictment just a few days before the presidential election and the Government's decision to switch from paraphrasing certain of Weinberger's notes, as was done in the first indictment, to quoting them directly. In the original indictment, a general allegation had been made about a January 7, 1986 White House meeting. When that general allegation was replaced with the exact

[24] (...continued)
111 S. Ct. 246 (1990); United States v. George, 1992 U.S. Dist. LEXIS 9618 (D.D.C. July 8, 1992).

[25] United States v. Weinberger, Crim. No. 92-0235-TFH, Memorandum Opinion and Pretrial Order No. 12 (D.D.C. Dec. 11, 1992). During oral argument on the motion to dismiss, the Court stated that it was "a very close issue." Transcript of December 7, 1992 Status Call, at 55. Indeed, in its written opinion the Court acknowledged that the "'key issue is notice to the defendant, and this notice is sufficient if the facts in the new indictment are essentially the same facts as those alleged in the old indictment.'" Pretrial Order No. 12, at 4 (quoting United States v. George, 1992 U.S. Dist. LEXIS 9618 (D.D.C. July 8, 1992). Because Weinberger had challenged the original Count 1 on the ground that all it charged were false statements about his notes rather than obstruction, it was difficult to maintain that he was not on notice that he was charged with lying about his notes. The Court conceded as much, finding that "[t]he facts alleged in the new indictment are substantially the same as those in the original indictment and the defendant clearly had notice of the factual basis for the charges." Id. at 5, 7.

quotation from the notes, a reference to Vice President Bush emerged.[26]

The timing, as we have explained, was responsive solely to the necessities of the case, particularly the pre-trial schedule of the court. The notes were quoted verbatim to demonstrate the falsity of Weinberger's denials, the materiality of the notes to the congressional inquiry, and because the general allegations about the notes had caused a serious issue which allowed the defense to argue ambiguity between the general allegations on the one hand and the actual notes on the other. The OIC was concerned that these alleged ambiguities would be a source of procedural discomfort to the prosecution during the trial.[27] If OIC had undertaken to delete the reference to Vice President Bush from the quotation, it would have deleted something that the

[26] Second indictment, supra tab 8, ¶ 17. The information that Vice President Bush attended a January 1986 meeting on the Iran arms sales was not new. What captured press attention was Weinberger's characterization of the Iran arms sales as an arms-for-hostages deal and the fact that the "VP favored" it.

[27] Quoting the notes verbatim eliminated Weinberger's claim that an indictment that had paraphrased his notes was improper. In his August 3, 1992 motion to strike surplusage from the first indictment, Weinberger argued that "the prosecutors' ... narrative description of the notes' purported contents (as opposed to direct quotations from the notes themselves) are inflammatory, argumentative, and obviously prejudicial." Defendant's Motion to Strike Surplusage, at 24. At oral argument on this motion, Weinberger's counsel accused the Government of "putting the spin they want on those notes" by paraphrasing them. Transcript of September 10, 1992 Motions Hearing, at 64.

Congressional Report itself had indicated was material.[28/] Given the Court's pre-trial schedule, there was no proper alternative to presenting the supplemental indictment quoting Weinberger handwritten notes.[29/]

28/ After describing the "full NSC meeting on January 7" and noting that, "[w]hile Secretaries Weinberger and Shultz continued to object strenuously, all others favored the plan or were neutral," the Select Committees added the caveat that "[t]here is no record that the Vice President expressed any views" at the January 7, 1986 NSC meeting. Report of the Congressional Committees Investigating the Iran-Contra Affair, H. Rep. No. 433, S. Rep. No. 216, 100th Cong., 1st Sess., at 203 (1987) (hereinafter "Congressional Report"). Weinberger's diary note is the missing record of the Vice President's views that was withheld from Congress.

29/ Suggestions were publicized that the indictment should have been sealed until after elections. Sealing is permitted only to serve a prosecutorial purpose, not to accommodate a political purpose. Fed. R. Crim. P. 6(e)(4); see, e.g., United States v. Ramsey, 791 F.2d 317, 324 (4th Cir. 1986).

V. THE GOVERNMENT'S CASE AGAINST WEINBERGER

The Government's trial evidence would have demonstrated -- contrary to the popular impression created by Weinberger's false testimony before Congress and his withholding of voluminous handwritten notes -- that Weinberger was a knowing participant throughout in the initiative to send arms to Iran in return for the release of Americans held hostage in Lebanon. In the summer of 1985, Weinberger knew of President Reagan's decision to authorize Israel to send missiles to Iran and his commitment to replenish Israel's missile stocks. Beginning in late September 1985 and continuing through the end of 1986, Weinberger also received -- along with National Security Adviser Robert McFarlane and Director of Central Intelligence William Casey -- a sizeable quantity of highly classified U.S. Government intelligence reports regarding the Iran initiative.[39/] These intelligence reports, which were frequent, provided detailed information regarding the pricing and delivery of missiles sold to Iran and the release of American hostages in Lebanon. In particular, in very late November and early December 1985, the reports revealed that

[39/] In his testimony before Congressional Committees, Weinberger falsely claimed that he had been cut off from this intelligence until shortly before December 7, 1985, when he first received one of these reports. See, e.g., SSCI Tr., at 6-9, 51 (Dec. 17, 1986); HPSCI Tr., at 39-41 (Dec. 18, 1986); Iran-Contra Investigation: Joint Hearings Before the Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition and the House Select Committee to Investigate Covert Arms Transactions with Iran, 100th Cong., 1st Sess., vol. 100-10, at 136-37 (July 31, 1987 public testimony) (hereinafter "Joint Hearings").

HAWK missiles were shipped to Iran from Israel in connection with hostage recovery efforts.

A. Count 5: Weinberger's Denial of the Existence of His Notes

Despite the dismissal of Count 1, the evidence that Weinberger had deliberately concealed his notes from Congress would have been offered as part of the Government's proof of the charges in Count 5.[31] Count 5 of the Indictment charged Weinberger with making false statements in the October 10, 1990 interview with members of the Independent Counsel's staff and a Special Agent of the FBI. The sole purpose of the interview was the issue of notes, and Weinberger and his attorney knew that before they came. During the interview, Weinberger was asked repeatedly, in several different ways, about his note-taking practices. He insisted that he rarely took notes; that, as a rule, he did not take any notes when he met with the President or other Cabinet members; and that he specifically did not take any notes during meetings concerning the Iran arms sales. Weinberger also stated that he did not make notes of meetings he attended and did not take notes of phone conversations. When asked about a report that he had withheld relevant notes

[31] Weinberger filed a motion in limine on December 14, 1992, following the dismissal of Count 1, to exclude all evidence relating to congressional document requests. This motion was opposed by the government and had not been decided at the time of the pardon.

from Iran/Contra investigators, he indignantly denied it. He stated that he had instructed his staff and others at DoD to turn over all notes and documents and that he was not aware of any relevant notes that had not been turned over. He insisted he had not deliberately withheld anything.[12/]

The government would have submitted evidence of Weinberger's deliberate failure to produce his notes to Congress as intrinsic evidence of the falsity of his statements to the OIC and as extrinsic evidence under Federal Rule of Evidence 404(b) to show Weinberger's motive to lie to the OIC. To establish the deliberate falsity of Weinberger's statements, the Government would have proved at trial that (1) Weinberger in fact maintained voluminous notes of meetings and phone calls, many of which were relevant to Iran/Contra; (2) Weinberger knew in 1987 of congressional

12/ FBI Record of Interview (Oct. 10, 1990), supra, tab 6; First Indictment, supra, tab 7, at 27-30. Weinberger has subsequently stated that he believed the OIC was inquiring only about notes he took during meetings and therefore did not understand the questions to include his diary notes. See, e.g., Weinberger Interview, ABC "This Week with David Brinkley" NEXIS Tr. at 12 (Dec. 27, 1992). This explanation is disingenuous, because Weinberger also failed to acknowledge or produce scores of pages of relevant meeting notes to the OIC.

Indeed, Weinberger denied that such meeting notes existed. As reflected in the FBI Record of Interview, Weinberger stated that he very rarely took notes during meetings -- which is, in itself, false -- and also denied that he made any other record of meetings when he returned to his office or that he took notes of phone conversations. In fact, Weinberger's diary notes consist almost entirely of notes of phone conversations and notes of meetings, made after the fact.

requests for his notes and diaries but produced none of them and went so far as to lie under oath to congressional investigators in 1987 about the existence of his notes; and (3) on his retirement as secretary of defense, Weinberger privately deposited his notes in the Library of Congress where no one could see them without his permission.

1. The Select Committees' Interest in Weinberger's Notes and Diaries

Both the House and Senate Select Committees considered contemporaneous notes to be important to their investigation of Iran/Contra. They specifically requested the handwritten notes and diaries of Cabinet officials and questioned witnesses about their record-keeping practices.[13/]

While the Select Committees understood that "[i]n light of the destruction of material evidence by Poindexter and North and the death of Casey, all of the facts may never be known,"[14/] they did not know that, despite their repeated

[13/] In a statement appended to the Select Committees' report on the Iran/Contra investigation, Senators Inouye and Rudman -- the Chairman and Vice Chairman, respectively, of the Senate Select Committee -- praised President Reagan for making excerpts of his personal diaries available to the Select Committees and for instructing other executive branch officials similarly to make all of their relevant records available. Senators Rudman and Inouye were particularly appreciative that administration officials had been asked to disclose personal documents and remarked that "[t]hose of us who keep diaries appreciate the intensely personal and private nature of the entries we make in such books, confiding our innermost concerns, aspirations and thoughts." Congressional Report, at 637.

[14/] Id. at 11.

requests for notes and personal diaries, Weinberger had failed to produce hundreds of pages of relevant handwritten diary and meeting notes. Nor did they know that Weinberger had testified falsely when he stated, under oath, in his June 17, 1987 congressional deposition that he did not take notes and was not aware of any documents that could refresh his recollection of Iran/Contra events.

Their assessment that other executive branch officials were fully forthcoming[23] has also proved to be incorrect. In addition to the Weinberger notes, the Independent Counsel has obtained volumes of highly relevant, contemporaneous notes from other administration officials that were never turned over to the Select Committees. These notes have added substantially to our understanding of Iran/Contra.

2. Weinberger's Awareness of His Notes

Throughout his career, Weinberger regularly took detailed notes of his daily activities, including summaries of his meetings and telephone conversations. While secretary of defense, Weinberger took more than 7,000 pages of notes on 5" x 7" government-issue note pads. He took nearly 1,700 pages of diary notes in 1985 and 1986 alone. During the same period, Weinberger compiled hundreds of pages of notes taken during White House and Cabinet meetings. More than 150 pages of these diary and meeting notes contain information relevant

[23] See id. at 637-38.

to Iran/Contra, including information that contradicts directly Weinberger's sworn testimony concerning his knowledge of the Iran arms sales and of Saudi contributions to the Contras.

According to General Colin L. Powell, who served as Weinberger's Senior Military Assistant from July 1983 to March 1986, Weinberger kept the 5" x 7" note pads on his desk and jotted down entries throughout the day. Weinberger stored completed note pads in his desk drawer and transferred the note pads to the bedroom attached to his office when the desk drawer was full.[36/] Weinberger intended to use these notes to write his memoirs.[37/]

Weinberger's White House meeting notes generally were taken on White House note pads or on the backs of documents contained in his briefing books. He maintained these meeting notes in a similarly systematic fashion. He labeled and dated many of his meeting notes after the fact, and he saved notes and amusing doodles that were passed to him by others during meetings.

[36/] General Powell described Weinberger's note-taking in an affidavit obtained by Weinberger's attorneys before the indictment. Affidavit of Colin L. Powell ¶¶ 3-4 (Apr. 21, 1992), tab 9. General Powell also stated that he regarded these notes as Weinberger's personal diaries and expressed the opinion that "it is entirely possible that it would not have occurred to [Weinberger] to associate or link these private notes on the 5 x 7 pads with a governmental request for 'notes' in the context of the Iran-Contra matter." Id. ¶ 3.

[37/] See, e.g., Affidavit of Thelma Stubbs Smith, ¶ 5 (Apr. 29, 1992), tab 10.

At trial, the Government would have shown that the sheer volume of Weinberger's notes, and the care he took in maintaining them for posterity, belie Weinberger's contention that he was unconscious of his notes and therefore forgot them. Even more incriminating are repeated references in Weinberger's diary notes to the very meetings in which he was asked by Iran/Contra investigators about his notes or diaries. For example, on two separate occasions that Weinberger denied to congressional investigators that he took notes, he turned around and duly recorded the meetings in his diary notes.[39/]

3. The Deliberateness of Weinberger's Concealment of His Notes From the Select Committees

Weinberger's notes and other contemporaneous documents show that, despite his direction to others to cooperate fully with the congressional investigation, Weinberger deliberately withheld his own notes from Congress. The Select Committees sought repeatedly to obtain Weinberger's handwritten notes and diaries. Those requests were communicated directly to Weinberger.

During a March 11, 1987 interview with the staff of the Senate Select Committee, Chief Counsel Arthur Liman told Weinberger that President Reagan's diary excerpts had been very useful to the Select Committees' investigation and

39/ Weinberger diary notes (Mar. 11, 1987 & June 17, 1987), infra, tabs 12 & 26.

remarked that he hoped to use these diary excerpts at the hearings.[39/] Weinberger stated that his own record-keeping habits were poor and said that he regretted he did not keep copious records of meetings as Henry Kissinger had done.[40/] Weinberger left the clear impression that he did not keep diaries or dictate his thoughts about a day's events.[41/] When the interview was over, Weinberger made the following entry in his daily diary notes: "2 Senate staff of Special Iran Committee in office - with Larry Garrett - re my recollections of Iran events."[42/]

The Senate and House Select Committees made formal written requests on April 4 and April 13, 1987, respectively, for Weinberger's notes and diaries.[43/] The DoD General Counsel's office relayed these requests to DoD officials in a series of internal memoranda. At least one of these -- an April 14 memorandum regarding the Senate Select Committee's document request -- reached Weinberger's desk and was stamped "SecDef Has Seen" on April 20, 1987.[44/]

[39/] File Memorandum by John D. Saxon at 2 (Apr. 25, 1987), tab 11.

[40/] Id. at 4-5. Weinberger repeated his Kissinger analogy when asked again about notes during his June 17, 1987 congressional deposition. Congressional Report, Appendix B, vol. 27, at 534 (Deposition of Caspar W. Weinberger).

[41/] Saxon Memo, supra, tab 11, at 5.

[42/] Tab 12.

[43/] Tabs 13, 14.

[44/] Tab 15.

The most incriminating document apart from Weinberger's own notes, however, is an April 17, 1987 "Action Memorandum" from DoD General Counsel H. Lawrence Garrett III to Weinberger that described the Senate and House requests for notes and diaries.[45/] Garrett advised Weinberger:

> I know you understand the nature of the obligations placed upon us by this request. I understand that these materials, if any exist, are highly personal and sensitive. Accordingly, I would of course insist that any provision of these materials to the Committees be conducted in as discreet and limited a manner as you wish.

The memorandum further advised Weinberger that Garrett would determine what "the arrangements currently are for the review of any similar records of other top-ranking officials." It concluded by stating that Garrett would "await further information/instructions from" Weinberger. Weinberger underlined the reference to other officials and wrote a note below: "Larry - let's have a meeting after you hear what others are doing."[46/]

The Garrett memorandum discredits any claim that Weinberger's subordinates simply failed to ask him for his notes. In fact, Garrett told Weinberger, specifically and in writing, that Congress had requested his handwritten notes

[45/] Tab 16.

[46/] Id. The Garrett memorandum was stamped "SecDef Has Seen" on June 17, 1987, indicating that Weinberger placed the document in his out box on the same day that he stated falsely in his congressional deposition that he did not take notes.

and diaries.[47] The memorandum also belies Weinberger's claim that he had no reason to believe that the congressional document requests encompassed personal documents such as his diary notes.[48] Not only did Garrett tell him that the requests included "highly personal and sensitive" papers, but Weinberger focused specifically on that part of the memorandum in asking Garrett to find out what other officials "are doing."[49]

Weinberger's diary notes show that Garrett raised this subject with him again in a meeting on April 21, 1987, after which Weinberger wrote: "Larry Garrett in office - re demands by Sen - House Committees for briefings on black programs - + their demand for my diary[.]"[50] There is also

[47] The memorandum contradicts Garrett's own affidavit, obtained by Weinberger's attorneys, in which Garrett stated that he had never asked Weinberger specifically whether he kept diary notes and that, had he done so, he is confident Weinberger would have produced them. Affidavit of H. Lawrence Garrett III ¶¶ 11-12 (Apr. 28, 1992), tab 17.

[48] See Weinberger CNN Interview NEXIS Tr. at 6 (Dec. 28, 1992); Weinberger Fox Morning News Interview NEXIS Tr. at 2 (Dec. 29, 1992).

[49] President Reagan's agreement to allow congressional investigators limited access to his personal diaries was also widely publicized, and, as discussed below, Garrett apparently explained these arrangements to Weinberger. It was also widely known that other administration officials, including Shultz's executive assistant Charles Hill, had produced at least some of their relevant, personal notes to congressional investigators.

[50] Tab 18. Weinberger's attorneys claim that this note actually reads "demand for my choices" and refers not to Iran/Contra but to some matter regarding "black programs" that was pending in April 1987 before the Senate and House

(continued...)

circumstantial evidence that Garrett raised the issue with Weinberger a third time on April 30, 1987, advising him of the arrangements that had been made for Iran/Contra investigators to review President Reagan's diaries. On April 29, 1987, Garrett and Assistant General Counsel Edward J. Shapiro attended a meeting of the General Counsels' Coordinating Group that harmonized administration responses to Congress and the OIC. Here, attorneys from various agencies discussed the terms on which the Select Committees and the OIC were permitted to the review relevant excerpts of President Reagan's personal diaries.[51/]

The same day, Garrett sent an "Information Memorandum" to Deputy Secretary of Defense William H. Taft IV, regarding "Congressional Request for Excerpts of Relevant Portions of the Diaries of the SecDef."[52/] The memorandum advised Taft that "[w]e have been asked again by the senior legal staff of the Senate Select Committee on Iran whether the SecDef keeps diaries. . . ." The memorandum then related to Taft that White House Counsel A.B. Culvahouse made transcribed excerpts of President Reagan's diaries available to the Select Committees and the OIC, subject to certain restrictions. The

[50/] (...continued)
Select Committees on Intelligence. The Government would have proven at trial that the disputed word is "diary" and that the note refers to the Iran/Contra Select Committees.

[51/] General Counsels' Coordinating Group Minutes of April 29, 1987 meeting, tab 19.

[52/] Tab 20.

memorandum concluded: "I do not know whether the Secretary keeps a diary, but it is obviously necessary to pursue this."

According to Taft, he advised Garrett that Weinberger regularly kept notes during the Nixon administration and told Garrett to be sure that any relevant notes were produced, but Taft could not fix the date of this conversation.[53/] Garrett's April 29 memorandum to Taft was stamped "Dep Sec Has Seen" on April 30, 1987.[54/] On the same day, Weinberger made the following entry in his own daily diary notes: "Larry Garrett in office re preparation for Senate House staff interview on Iran hgs - also re papers to be turned over."[55/] The day after Garrett's conversation with Weinberger, on May 1, 1987, Mark A. Belnick, Executive Assistant to the Chief Counsel of the Senate Select Committee, spoke to Shapiro and recorded in a file memorandum that Shapiro "had been informed by Secretary Weinberger's office" (emphasis added) that Weinberger had "no entries in his diaries responsive to [the Senate] requests" and that Weinberger had some "but not many" notes responsive to the requests.[56/]

[53/] FBI Record of Interview, at 2 (Apr. 8, 1992) (Interview of William Howard Taft IV).

[54/] Id.

[55/] Tab 21.

[56/] Tab 22. The House Select Committee continued separately to pursue Weinberger's notes and diaries. On May 22, 1987, Joseph H. Saba, staff counsel to the House Select Committee, (continued...)

In his June 17, 1987 congressional deposition Weinberger testified falsely that he rarely made notes of meetings -- either contemporaneously or after the fact -- and had no records that could supplement his memory regarding Iran/Contra events.[37] As he made these statements under oath in his office, Weinberger was sitting only four feet from the desk drawer that contained his diary notes. After the deposition, Weinberger made the following entry in his daily diary notes: "Gave deposition to Senate + House staff members on Joint Iran investigation. - 10:35 AM - 1:10 PM Larry Garrett & Mr. Shapiro there."[38]

[36](...continued)
wrote to Garrett, noting that the House Committee had received few documents from Weinberger and asking for Weinberger's "diaries, appointment books, records of meetings, and handwritten notes. . . ." The letter further advised that the request "is inclusive of [Weinberger's] personal diary entries made from October 1984 through 1987, pertaining to the Boland Amendment, Iran, Nicaragua, and the Contras." Tab 23.

On June 10, 1987, Saba wrote again to Shapiro, reiterating the House Committee's request for access to Weinberger's calendars and diaries, "and all other schedule-type records of the occurrence of meetings, events, and telephone conversations for the period July 1, 1985, through December 31, 1986." Tab 24. According to Weinberger's own diary notes, his Senior Military Assistant, General Gordon Fornell, consulted him on June 15, 1987, two days before Weinberger's deposition, about "data on my calendar to be turned over to Jt. Iran Committee[.]" Tab 25. The next day, Weinberger's official calendars and telephone logs, but none of his diary or meeting notes, were produced to the House Select Committee.

[37] See Congressional Report, Appendix B, vol. 27, at 533-34.

[38] Tab 26.

4. The Deliberateness of Weinberger's Lies to Independent Counsel

As Weinberger was preparing to leave office on November 21, 1987, he personally packed his diary notes. Roger Sandler, a free-lance photographer, was present to take photos for a magazine profile of Weinberger. These photos show Weinberger handling large stacks of his diary notes, neatly bundled together with binder clips and rubber bands.[59] As Weinberger was taping boxes, he commented on his diary notes, and the two of them briefly discussed diaries.[60]

Weinberger never submitted his diary and many of his meeting notes for classification review. They were deposited privately with the Manuscript Division of the Library of Congress as unclassified private property, and under an agreement that provided expressly that no one could have access to Weinberger's papers without his permission.[61]

Weinberger's repeated public assertions that his notes were deposited in "the most public depository in the United States"[62] are therefore grossly misleading. In fact, Weinberger refused in February 1990 to allow even the General

[59] Tab 27.

[60] FBI Record of Interview, at 3 (July 28, 1992) (Interview of Roger Sandler).

[61] Agreement of Deposit (Aug. 27, 1987), tab 28.

[62] E.g., Weinberger Press Conference NEXIS Tr. at 39 (Dec. 24, 1986).

Accounting Office access to these papers when it was attempting to monitor former agency heads' compliance with laws governing the removal of government records.[43]

Weinberger's renewed denials of the existence of his notes, in an OIC interview he knew would be solely about his notes, were simply a continuation of his 1987 decision to conceal them from Congress and to deny the extent of his knowledge of the Iran arms sales.

B. Count 2: Weinberger's Denial of His Knowledge of Saudi Arabia's $25 Million Contribution to the Contras

Count 2 of the Indictment charged Weinberger with making false statements to the Select Committees denying his knowledge that Saudi Arabia had contributed to the support of the Contras at a time when Congress had forbidden the use of U.S.-appropriated funds for this purpose. One of the chief concerns of the congressional Iran/Contra investigations was third-country assistance to the Nicaraguan Contras.[44] Weinberger's handwritten diary notes and other contemporaneous documents reveal that he knew in the Spring

[43] The GAO's August 1991 report, which noted that Weinberger had not given the GAO access to his collection, concluded that further oversight was needed to ensure that agency heads did not improperly remove government records from the public domain. General Accounting Office, Federal Records - Document Removal by Agency Heads Needs Independent Oversight 23-24 (Aug. 1991).

[44] See, e.g., Congressional Report, at 15-16, 38-39, 44-47, 63, 69-71, 120-21.

of 1985 that Saudi Arabia was providing $25 million in assistance to the Contras. Yet when asked on June 17, 1987, when he appeared as a witness before the staff of the Select Committees, Weinberger made the following statement under oath:

> Q. Do you recall learning at some point that [the Saudis] or some people connected with [the Saudis] provided funds for the contras?
>
> A. No. I don't have any memory of any contra funding or of anything connected with [the Saudis] that I can remember now.[45]

1. The Importance to Weinberger of United States Relations With Saudi Arabia and the Survival of the Contras

Weinberger's diary notes during his nearly seven years as secretary of defense demonstrate that Saudi Arabia and Nicaragua were each foreign policy matters of great concern to him. During the period 1984-1987, his diary notes record at least 64 separate contacts with Prince Bandar bin Sultan, the Saudi Ambassador to the United States. These include 16 meetings, mostly private, in Weinberger's office; telephone conversations on 18 separate days; and 10 social events at which both men were present. The subjects of Weinberger's dealings with Bandar, as recorded in the diary, range from the birth of Bandar's child to political strategy for handling the revelation of the Iran arms sales, and include

[45] Congressional Report, Appendix B, vol. 27, at 529 (Deposition of Caspar W. Weinberger).

discussions of helping Saudi Arabia acquire United States weapon systems.[44/]

Weinberger's diary also records his preoccupation with the Nicaraguan Contras and events in Central America. On hundreds of separate occasions during 1985 and 1986, he made diary entries about formal meetings within the Administration, telephone calls or private meetings at the Pentagon concerning such things as the latest military and political developments in the region, the prospects for obtaining funding from Congress for the Contras, recent trips to Central America by other officials and his own dealings with Contra leaders.

At trial, the Government would have demonstrated that Weinberger's congressional testimony and statements

[44/] For example, as the Iran/Contra scandal was breaking publicly, Weinberger's diary contains these notes of his private meeting with Prince Bandar on Sunday, November 23, 1986:

> Prince Bandar in office - Nancy Reagan - in a 1½ hr. talk Friday with him - he invited President to dinner at his Embassy - sd she thinks Shultz should go - that he has been disloyal to the President - he sd he recommended to her that I be named Secretary of State; that I could negotiate an agreement with Soviets because no one could say I was soft on them - She feels that very few are being loyal to the President + that Shultz should not have gone to Canada Friday + should support President - She would like Baker to go in as Secretary of Defense!

See tab 29.

consistently protected the false position taken by the Saudi Arabian Government: total denial of its support for the Contras. On October 21, 1986, Prince Bandar issued the following press release from the Royal Embassy of Saudi Arabia in Washington, D.C.:

> Saudi Ambassador Denies
> Nicaraguan Involvement
>
> The Ambassador of Saudi Arabia to the United States today issued the following statement in response to press inquiries.
>
> "Saudi Arabia is not and has not been involved either directly or indirectly in any military or other support activity of any kind for or in connection with any group or groups concerned with Nicaragua."[67]

2. Weinberger's Knowledge of Saudi Arabia's Support for the Nicaraguan Contras

Weinberger's notes revealed that he knew that Saudi Arabia gave financial support to the Nicaraguan Contras during the period when Congress had refused to appropriate funds for that purpose. On March 13, 1985, Weinberger made the following entries in his daily notes after a private, noontime meeting with General John W. Vessey, Jr., Chairman of the Joint Chiefs of Staff:

> Jack Vessey in office alone - after meeting [with others] - Bandar is giving $25 million to Contras - so all we need is non-lethal aid

[67] Tab 30.

> Called Bud McFarlane - out; l.w. [left word]
>
> ...
>
> Called Bud McFarlane - passed on to him Jack Vessey's report that Bandar is giving $25 million to Contras - + suggested that if so - we go for covert non-lethal aid of $14 mil.[41]

Weinberger's daily notes also indicate that he spoke with McFarlane again the following day about Saudi aid to the Contras:

> Called Bud McFarlane - No further news on Saudis gifts to Contras[42]

The following morning, March 15, 1985, Weinberger and Deputy Secretary of Defense William Howard Taft IV had their regular Friday breakfast with Director of Central Intelligence ("DCI") William J. Casey and Deputy Director of Central Intelligence ("DDCI") John N. McMahon at the CIA. McMahon's memorandum for the record, created that same day, documents the following discussion of the Nicaraguan Contras, including Saudi support:

> Question of the support to the Contras came up. The Director [Casey] noted that we should have another meeting on it but following last week's meeting of the LSG [Legislative Strategy Group] we tended to be leaning towards non-lethal aid. I [McMahon] described the assignment given to [Assistant Secretary of State] Motley to develop different options which could be packaged and then played against Senators Lugar and Durenberger to see what combination of

41/ Tab 31.

42/ Tab 32.

> options in a single package might be acceptable to Congress. But I noted at the meeting that there was no agreement that we would be limited to non-lethal aid. The Director [Casey] said that McFarlane was to meet with Lugar and Durenberger today. In closing the Secretary [Weinberger] stated that he had heard that Bandar, Ambassador of Saudi Arabia, had earmarked $25 million for the Contras in $5 million increments.[70]

Credible witnesses also would have testified at trial to Weinberger's knowledge of Saudi Arabia's support for the Contras. First, Vessey, who served as Chairman of the Joint Chiefs of Staff until September 1985, recalls that Bandar informed him on two occasions that the Saudis were funding the Contras. On each occasion, Vessey immediately reported Bandar's statements to Weinberger, who responded that he did not want this issue to become public. Vessey also recalls that he or Weinberger, at a subsequent White House conversation they had with McFarlane, urged McFarlane to support a proposed arms sale to Saudi Arabia because the Saudis were funding the Contras.[71] Second, John McMahon, who served as the CIA's deputy director until March 1986, recalls two meetings -- one in Weinberger's Pentagon office, and the one at the CIA that he recorded in his memorandum -- where Weinberger reported to McMahon and Casey that the Saudis were funding the Contras. Third, McFarlane also

[70] Tab 33.

[71] FBI Record of Interview, at 7 (June 11, 1992) (Interview of John W. Vessey).

discussed with Weinberger the Saudi contributions to the Contras during 1984 and 1985.[72]

Throughout the period when Weinberger was testifying that he had no recollection that the Saudis had supported the Contras, specific events continued to give Weinberger vivid reminders on that very subject. On January 14, 1987, for example, a reporter drew an angry response when he publicly confronted Weinberger, who denied knowing about Saudi aid to the Contras. Similarly, when Vessey told Weinberger on February 11, 1987 that he (Vessey) had just told an FBI Agent of his Spring 1985 conversations with Bandar and Weinberger about Saudi aid to the Contras,[73] Weinberger replied that he had forgotten all about the conversations but agreed with Vessey's recollection of what they had heard in 1985.[74] Weinberger recorded this meeting in his diary as follows:

> Jack Vessey in office - he remembers telling McFarlane about Saudi claim they had sent funds to Contras - also he has been asked to do a mission to Hanoi on POW's by Frank [Carlucci] - OK
> Discussed Secretary of Navy vacancy[75]

[72] FBI Record of Interview, at 3-5 (Apr. 15, 1987) (Interview of Robert C. McFarlane); FBI Record of Interview, at 10 (Mar. 10, 1987) (McFarlane).

[73] FBI Record of Interview (Feb. 11, 1987) (Vessey).

[74] FBI Record of Interview, at 8 (June 11, 1992) (Vessey).

[75] Tab 34.

3. Weinberger's Previous False Testimony Regarding the Saudi Contribution

Independent Counsel's discovery of the Weinberger notes and the falsity of his testimony occurred after the statute of limitations had run on some of his false testimony, but evidence of this testimony would have been admissible to show the motive and intent for his later lies. Weinberger actively concealed from Congress his knowledge of Saudi Arabian support for the Contras as early as the summer of 1986. On September 4, 1986, in response to a letter of inquiry from Representative Dante B. Fascell, Weinberger wrote that he "regarded the allegation of Saudi funding of U.S. assistance to anti-government forces in Nicaragua as so outlandish as to be unworthy of comment from the Department [of Defense]."[76/]

Later in 1986, Weinberger continued to conceal his knowledge from Congress. On December 17, 1986, during sworn testimony in closed session before the Senate Select Committee on Intelligence, Weinberger gave the following answers to Senator Bradley's detailed and persistent questions:

> Q: Have you been in any meeting since December -- well, in the last 2 years -- that discussed the funding for the contras outside of a direct congressional act?

[76/] See tab 35. The press report that prompted Fascell's letter alleged that a slush fund, built into the AWACS sale to Saudi Arabia, provided funds for the Contras.

A: No. I did spend a lot of time trying to persuade various Members of the Senate and House that the $100 million was required, and --

Q: But outside of --

A: Not outside; no, sir. No.

Q: You had no discussions with any third party about provision of equipment or money to the contras?

A: No, sir.

Q: You've been in no meeting where it was discussed?

A: To get - from outside assistance?

Q: Uh-huh.

A: No, I don't have any recollection of that. I know that there were a lot of attempts to get aid to the contras, but my efforts were concentrated entirely on trying to get the $100 million bill passed.

Q: But prior to that, in 1985 or early 1986 you had no discussions with anyone about providing funds or equipment to the contras?

A: I have no recollection of anything of that kind at all, Senator; no. I concentrated, as I said, entirely on the trying to get the Congress to approve the $100 million appropriation, which I thought then and think now was very necessary.

Q: You were in no meeting in which this was discussed?

A: I don't have any recollection of it, Senator, I really don't; no.[IV]

[IV] SSCI Tr., at 67-68.

Later, in Weinberger's public testimony before the Select Committees on July 31, 1987, his denial of knowledge was categorical:

> Q. ... Mr. McFarlane testified that in the spring of 1985 ... there was a large contribution from Country Number Two [Saudi Arabia]. You were asked in your deposition whether you were aware at or about that time of the contribution. Do you recall being aware?
>
> A. No. I was not aware.
>
> ...
>
> Q. But you don't have any recollection of being advised by Mr. McFarlane or --
>
> A. No.
>
> Q. -- the President or anyone else that there had been such a large contribution from Country Two [Saudi Arabia]?
>
> A. No. The reason I am quite sure about it is that we were all making major efforts at that time to get funding for the Contras from the Congress and I think probably many of the gentlemen here remember that I made lots of calls in support of various bills and particularly trying to get the $100 million appropriation which ultimately was voted.[IV]

[IV] 10 Joint Hearings, at 152-53.

4. Constitutional and Practical Implications of Weinberger's False Testimony Regarding the Saudi Contribution

There is no need to belabor the constitutional problems inherent in a foreign policy that enables a President and his aides to carry out congressionally forbidden covert actions with funds raised outside of the appropriations process -- and his concealment of that policy from Congress. As the Select Committees concluded in 1987, such policy undermines "the Framers' belief that 'the purse and the sword must never be in the same hands'" and thus defines "the path to dictatorship."[19] Moreover, at a practical level,

> allowing foreign policy to be conducted with funds supplied by private parties and foreign governments is likely to create the expectation by the donor nations that they can expect something in return for their largesse.[20]

[19] Congressional Report, at 390; accord id. at 411 ("The Constitution contemplates that the Government will conduct its affairs only with funds appropriated by Congress."); id. at 412 ("They [the Framers] were concerned that if the executive branch had both the power to raise and spend money, and control over the armed forces, it could unilaterally embroil the country in war without consent of Congress, notwithstanding Congress' exclusive power to declare war.").

[20] Id. at 391. Hill's notes reflect Executive Branch awareness of this Congressional concern. On May 6, 1987, Shultz made the following statements to his Executive Assistant Charles Hill, who wrote them in his notebook:

> HB [Howard Baker] handed me note that SA [Saudi Arabia] gave 31 M to Contras. SA denied it. Senate Cmte pressing whether it done in return for certification [required by law to buy AWACS from the United States.]

(continued...)

In his collection of meeting notes, Weinberger preserved a cruder expression of this view apparently passed to him by Attorney General Meese during a meeting. On White House stationery, it reads:

The Weinberger Doctrine
FOR EVERY QUID
THERE IS A
QUO[81]

C. Count 3: Weinberger's Denial of His Knowledge of the Planned HAWK Missile Shipment in November 1985

Count 3 of the Indictment charged Weinberger with perjury for false statements under oath that denied his knowledge that the November 1985 HAWK missile shipment was to take place. Weinberger repeatedly denied to congressional investigators and to the OIC that he had contemporaneous knowledge of the planning for the November 1985 HAWK missile shipment to Iran from Israeli stocks. Yet his diary notes demonstrate his detailed and contemporaneous knowledge of the plans for that shipment. And even though he opposed the shipment and warned the President that it would be illegal under the Arms Export Control Act, Weinberger's notes indicate that, in furtherance of President Reagan's decision to proceed, he, as secretary of defense, took steps to

80/ (...continued)

Tab 36.

81/ Tab 37.

identify adequate U.S. HAWK missile inventories to replenish the Israelis.

As the Indictment states, Weinberger was asked directly about this while testifying under oath before the Select Committees on July 31, 1987:

> Mr. Eggleston: The Committee has also received testimony that on that weekend of November 23 and November 24, [1985] there was a shipment of 18 HAWK missiles from Israel to Iran. This [exhibit] was a paper that was written immediately prior to that time. Let me just ask you: Did you have any knowledge that that transfer was to take place?
>
> Secretary Weinberger: No, I did not.

But his contemporaneous notes reveal that Weinberger, who was aware of the earlier TOW missile shipments from Israeli stocks to Iran in August and September 1985,[82] was notified on November 9, 1985 by McFarlane of a new phase in the arms-for-hostages plan. After their conversation, Weinberger made the following note in his diary:

> Bud McFarlane ... wants to start "negot." exploration with Iranians (+ Israelis) to give Iranians weapons for our hostages - I objected - we'll talk later on secure -[83]

The next day, after speaking again with McFarlane about the latest proposal to ship arms to Iran, Weinberger made this note:

> Bud McFarlane ... - negotiations are with 3 Iranian dissidents who say they want to overthrow government. We'll demand release of all

[82] FBI Record of Interview, passim (Mar. 20, 1992) (McFarlane).

[83] Tab 38.

> hostages. Then we might give them - thru Israelis - Hawks but no Phoenix.[84]

One week later -- after McFarlane had traveled to Geneva with President Reagan for a summit meeting with Soviet President Gorbachev while Weinberger remained in Washington -- McFarlane again telephoned Weinberger about the proposed HAWK missile shipment. Weinberger made a diary note of McFarlane's specific request for 500 HAWK missiles from DoD stocks:

> Bud McFarlane fm Geneva - update on [summit] meetings - all OK so far - Also wants us to try to get 500 Hawks for sale to Israel to pass on to Iran for release of 5 hostages Thurs.[85]

Weinberger informed Powell of McFarlane's request.[86] Powell promptly obtained the requested information and reported back to Weinberger, who made the following diary note:

> Colin Powell in office re data on Hawks - can't be given to Israel or Iran w/o Cong. notification, - breaking them up into several packages of 28 Hawks to keep each package under $14 million is a clear violation[87]

Weinberger, in turn, relayed Powell's information to McFarlane in Geneva. Weinberger, clearly frustrated, made

[84] Tab 39.

[85] Tab 40.

[86] FBI Record of Interview, at 7-8 (Feb. 24, 1992) (Interview of Colin L. Powell).

[87] Tab 41.

the following diary entry regarding McFarlane's non-committal response:

> Called McFarlane in Geneva - re above - he "thanks me for call" -[88]

The next day, McFarlane informed Weinberger that, notwithstanding the legal restrictions that Weinberger had identified, President Reagan had decided to approve the proposed HAWK missile shipment to Iran. Weinberger recorded the President's decision in his diary as follows:

> Bud McFarlane rmc. [returned my call] fm Geneva (2) - he hasn't heard of request for logistical support for hostages - return - Told him we shouldn't pay Iranian anything - he sd President has decided to do it thru Israelis.[89]

Later that day, McFarlane called to give Weinberger the latest details on the planned HAWK missile shipment, which Weinberger again recorded in his diary:

> Bud McFarlane fm Geneva - working on broad agreement language - Israelis will sell 120 Hawks, older models to Iranians - Friday [hostage] release
>
> Called Colin Powell - re above[90]

On Thursday, November 21, 1985, Weinberger made additional diary entries regarding this arms-for-hostages initiative:

> In office 720 Am - 105 Pm
> Saw Colin Powell - full statements of Geneva meetings, agreements - etc - OK - also re Hawks for Israel-Iran
> ...

88/ Id.

89/ Tab 42.

90/ Tab 43.

> Admiral Crowe in office - re President's decisions at Geneva - hostage rescue attempts[21]

On Saturday, November 23, Weinberger made a diary note of his call from his home to General Powell:

> Colin Powell - ... no hostage release last night[22]

On Monday, November 25, 1985, Weinberger's diary contains a final note regarding this phase of the Iran arms sales:

> Admiral Crowe in office - ... also re Iranian ~~host~~ held hostages[23]

Weinberger also received intelligence reports confirming that weapons had been shipped to Iran on November 24, 1985. Subsequent intelligence reports made clear that these weapons had been HAWK missiles.

D. Count 4: Weinberger's Denial of His Knowledge of the Replenishment Issue

Count 4 charged Weinberger with perjury based upon his false denial of knowledge of the replenishment issue that was created by Israel's arms shipments to Iran in 1985. On July 31, 1987, in sworn testimony before the Select Committees, Weinberger gave the following false answer:

> Q. And in addition, there are various documents which are in evidence before the Committee which refer to the Israeli desire and need for

21/ Tab 44.

22/ Tab 45.

23/ Tab 46.

> replenishment of weapons that the Israelis were sending. Did you know that replenishment was an issue?
>
> A. No, I have no memory of that.

This testimony conformed to Weinberger's previous false statements to Iran/Contra investigators, immediately after exposure in 1986 regarding Israel's role in arms shipments to Iran.[24/]

Weinberger clearly knew of the replenishment issue throughout 1985 and into 1986. In July and August 1985, McFarlane informed Weinberger first of Israel's proposal to send arms to Iran to achieve the release of Americans held hostage in Lebanon,[25/] and then of President Reagan's decision to approve that proposal, including his agreement to

24/ For example, during his December 17, 1986 testimony in closed session before the Senate Select Committee on Intelligence, Weinberger gave the following answer to a question from Senator Cohen:

> Q: So to the best of your recollection there was no discussion about the Israelis transferring arms and us possibly resupplying them?
>
> A: Not in my presence; no. I heard about that only much later after these things started to come out and as I say I heard -- only heard that statements were being made, not that that had actually happened.

SSCI Tr., at 58.

25/ FBI Record of Interview, at 2, 5-7 (Mar. 20, 1992) (McFarlane); FBI Record of Interview, at 2-3 (Dec. 3, 1986) (McFarlane).

replenish Israel's weapons stocks after shipments to Iran.[26] McFarlane also informed Weinberger that Israel had shipped TOW missiles to Iran in August and September 1985, and that the United States had to replenish Israel's stocks.[27] From September 1985 through the end of 1986, Weinberger also received intelligence reports concerning past and proposed arms shipments to Iran in return for the release of American hostages, including the initial TOW missile shipments and a delivery of HAWKs on November 24, 1985. Weinberger's own notes show that, in November 1985, McFarlane advised Weinberger of President Reagan's decision to provide HAWK missiles to Iran through Israel,[28] and that McFarlane asked Weinberger "to try to get 500 HAWKS for sale to Israel to pass on to Iran for release of 5 hostages"[29]

On Saturday, December 7, 1985, Weinberger attended a meeting at the White House of President Reagan and his senior national security advisers. McFarlane reviewed the development of the Iran arms sales to that point, including Israel's TOW missile shipments and the November 1985 HAWK

[26] FBI Record of Interview, at 3, 5-6, 9 (Mar. 20, 1992) (McFarlane); FBI Record of Interview, at 4 (Mar. 13, 1987) (McFarlane); FBI Record of Interview, at 2-3 (Dec. 3, 1986) (McFarlane).

[27] FBI Record of Interview, at 19-22 (Mar. 20, 1992) (McFarlane); FBI Record of Interview, at 2-3, 5 (Mar. 31, 1992) (McFarlane).

[28] Weinberger Diary Note (Nov. 20, 1985), supra, tab 42.

[29] Weinberger Diary Note (Nov. 19, 1985), supra, tab 40.

missile shipment.[199] On December 10, 1985, Weinberger attended another meeting at the White House on this topic. On the back of his DoD daily press clippings, Weinberger took two full pages of handwritten notes during the meeting, including the following statements by McFarlane:

Bud
Sales of arms only in connection
with establishment of
better gov't -
Hostages only ~~indirect~~ indirectly
linked

Separate hostage issue -
We tried that + they
rejected it
We may lose a hostage this
weekend
...
Options
I accept original plan
might lead to disclosure +
more hostages
II - US Raid to release hostages
[] in
Beirut
- some casualties inevitable
III - Continue to stand away
fm it - Israeli's will
go on delivering weapons
+ they might get hostages back
IV - Do nothing
(V - US deal with Iranians +
give up Israeli cover)

covert operation to get
arms to overthrow elements
...
Bud
[Proposed message for Syria]

We still must replace
500 TOWS to Israel

[199] FBI Record of Interview, at 19-22 (Mar. 20, 1992) (McFarlane); FBI Record of Interview, at 3 (Mar. 31, 1992) (McFarlane).

...

President - worried about
hostages - let
Israelis go ahead with
arms sales - we'll
get hostages back -
--------[101]

In January 1986, after President Reagan had decided to cut out Israel by shipping arms directly from United States stocks to Iran, Weinberger received additional information about the replenishment issue. Noel C. Koch, a deputy assistant secretary of defense, reported to Weinberger on January 14, 1986 that an Israeli arms procurement official had agreed to postpone, until the hostages had been released, the needed replenishment of the TOW missiles Israel had sent to Iran in 1985.[102] At a later point, the CIA asked Powell to increase its order for the purchase of TOWS from DoD stocks by an increment of approximately 500 missiles. Powell understood that the added increment was to replenish an earlier Israeli shipment of TOW missiles to Iran, and he discussed replenishment with Weinberger at that time.

[101] Tab 47.

[102] FBI Record of Interview, at 9-10 (Apr. 2, 1992) (Interview of Noel C. Koch).

VI. NOVEMBER 1986: THE REAGAN ADMINISTRATION'S RESPONSE TO THE PUBLIC EXPOSURE OF THE IRAN ARMS SALES

As the Iran arms sales scandal began to unravel publicly in November 1986, senior administration officials were gravely concerned about the consequences for the Reagan presidency. They were particularly concerned that the two arms shipments to Iran in 1985, before the President had signed a national security Finding authorizing such shipments, violated the Arms Export Control Act ("AECA"). As public and congressional criticism mounted, the White House scrambled first to deny and then to minimize the U.S. role in those shipments.

Weinberger's notes, which he withheld from Congress, document the administration's efforts to conceal U.S. involvement in the November 1985 arms shipment. They show that Weinberger opposed disclosing the arms sales to the public and acquiesced as other administration officials provided information to members of Congress and to the public that Weinberger knew to be false. These facts would have been exposed throughout Weinberger's trial by his notes and by additional documentary evidence and testimony from other administration officials. It would have been presented at trial as proof of Weinberger's motive to testify falsely to

Congress, to lie to the OIC, and to withhold his notes from both investigations.[193/]

A. Public Disclosure

On November 3, 1986, the Lebanese newspaper Al Shiraa disclosed that the United States had secretly been selling arms to Iran and reported that McFarlane had traveled to Tehran earlier that year, carrying U.S. spare weapons parts. The White House denied these reports by stating that U.S. policy toward Iran had not changed. On November 5, 1986, Weinberger wrote in his daily diary notes "Called John Poindexter - Shultz has suggested 'telling all' on attempts to deal with Iran to get their help - strongly objected - I sd we should simply say nothing - John agrees."[194/]

As alleged in the Indictment, the administration's changing response to demands by the public and Congress for full disclosure of the facts evolved during a series of meetings between President Reagan and his most senior advisers, including Weinberger, in November 1986. On November 10, 1986, Weinberger met with the President in the Oval Office, along with Secretary of State Shultz, Vice

193/ Independent Counsel did not allege in the Indictment that Weinberger conspired with other high-ranking officials to cover up the administration's involvement in the November 1985 HAWK shipment. Facts regarding the conduct of other administration officials in November 1986 were alleged in the Indictment, however, to provide a factual context for Weinberger's charged misconduct and as evidence of his motive for such misconduct.

194/ Tab 48.

President Bush, Attorney General Meese, White House Chief of Staff Don Regan, National Security Adviser John Poindexter, CIA Director William Casey, and Poindexter's deputy, Alton Keel.

Poindexter in his basic presentation omitted the 1985 arms sales. He described the arms shipments as beginning with a January 17, 1986 Finding signed by the President, which authorized direct U.S. arms sales to Iran rather than through Israel; Meese believed this to be a legal covert action pursuant to the National Security Act. Poindexter omitted any mention of U.S. approval of or involvement in the 1985 shipments of U.S. arms from Israeli stocks. Instead, he asserted that U.S. officials first learned of Israeli shipments to Iran when they confronted Israeli officials after discovering a warehouse of United States origin arms in a European country in 1985.[195] Although many of those present, including Weinberger, knew that Poindexter's story was false, they permitted his false story to be accepted as the basis for discussions of future public disclosure.

The group reviewed a draft press statement prepared by Casey. Poindexter opposed issuing a public statement because it would terminate ongoing negotiations with Iran.[196] Regan urged they issue a statement, because "we are being

[195] Hill notes (Nov. 10, 1986), tab 49; Regan notes (Nov. 10, 1986), tab 50; Keel notes (Nov. 10, 1986), tab 51.

[196] Regan notes, supra, tab 50.

hung out to dry" and "[o]ur credibility is at stake," according to Weinberger's meeting notes.[107] President Reagan favored a statement emphasizing that the United States had not dealt with terrorists but was pursuing a long-range policy toward Iran.[108] Meese wanted the statement to include the assertion that no U.S. laws or policy had been violated.[109] When Shultz demanded to know whether there would be further arms sales to Iran, President Reagan responded by insisting that his advisers support the policy and not say anything else publicly. Shultz replied that he supported the President, but not the policy.[110]

The press statement released later that day did not confirm or deny that the arms sales had taken place. It simply announced that the President had met with his senior national security advisers to discuss the hostages held in Lebanon:

> As has been the case in similar meetings with the President and his senior advisers on this matter, there was unanimous support for the President. While specific decisions discussed at the meeting cannot be divulged, the President did ask that it be reemphasized that no U.S. laws have been or will be violated and that our policy of not making concessions to terrorists remains intact.

[107] Tab 52.

[108] Regan notes, supra, tab 50; Keel notes, supra, tab 51.

[109] Regan notes, supra, tab 50.

[110] Regan notes, supra, tab 50; Keel notes, supra, tab 51; Hill notes, supra, tab 49.

Also, on November 10, 1986, Representative Lee Hamilton, chairman of the House Permanent Select Committee on Intelligence, asked Poindexter, Casey, Shultz, and Weinberger to brief the committee on the Iran arms sales. In a handwritten note on Hamilton's letter, Weinberger suggested responding that "Mr. Casey knows most about it + that he will speak for the adm[inistration], + that I would not have anything to add to his testimony."[111/] Weinberger ultimately designated his aide Richard Armitage to appear in his place at the briefing.

On November 12, 1986, a story in The New York Times questioned the legality of the arms sales to Iran. According to Regan's notes, Nancy Reagan telephoned Regan that she was "very upset" by the press reports and told Regan that the policy of refusing comment on the arms sales was "[r]isking presidency."[112/]

President Reagan and his top advisers met with congressional leaders later on November 12, as Weinberger recorded in his diary: "Attended WH Sit Rm meeting - with President, VP, Shultz, Ed Meese, Poindexter - Sen Byrd, Jim Wright, Bob Dole, Dick Cheyney [sic]"[113/] The purpose of the meeting was to brief the congressional leadership on the Iran arms sales. According to Regan's notes of the

111/ Tab 53.

112/ Regan note of telephone call with "NR" (Nov. 12, 1986).

113/ Tab 54.

meeting, Poindexter once again provided the false cover story that "Israel's participation in arms selling led us to discover arms in [a European country] which Israel [was] selling to get Jews out of Iran."[114/] When Senator Byrd demanded to know when the administration's contacts with Iran began, Poindexter responded falsely that, although the administration had begun to explore contacts with Iran in 1985, there had been "no transfer of material" before the Finding was signed in January 1986.[115/] President Reagan, Weinberger and other administration officials, knowing that Poindexter's statements were false, permitted them to stand.

On November 13, 1986, President Reagan on national television purported to set out the facts as to the arms sales. He publicly admitted for the first time that he had authorized "the transfer of small amounts of defensive weapons and spare parts for defensive systems to Iran." He insisted, however, that "[t]hese modest deliveries, taken together, could easily fit into a single cargo plane." He denied reports of dissension within the administration and asserted that "all appropriate Cabinet officers were fully consulted." The President also reiterated his earlier statement that no federal laws had been broken and assured the public that "the relevant committees of Congress are

[114/] Tab 55.

[115/] Id.

being, and will be, fully informed." He did not mention the 1985 arms sales to Iran.

On Sunday, November 16, Shultz appeared on CBS-TV's "Face the Nation." Shultz stated that he opposed any further arms sales to Iran but, when pressed, conceded that he could not speak for the administration. Weinberger's diary notes for the day reflect that he spoke to John Poindexter later that day "re Shultz 'distancing himself'" from the Iran arms sales.[116/]

On November 18, Weinberger noted in his diary that he met that day with Armitage to prepare for Armitage's testimony to the intelligence committees on Friday, November 21: "Saw Rich Armitage - re his testimony Friday - - Told him I did not remember any spare parts having been sent - Also he wanted to know if I'd seen Pres. finding before - Told him no[.]"[117/]

On November 19, President Reagan once again addressed the nation in a televised press conference. He pledged that there would be no further arms sales to Iran and promised again that "all information will be provided to the appropriate members of Congress." In response to a

116/ Tab 56. It was widely reported during this period that Shultz would either resign in protest over the Iran arms sales or be forced from office for his disloyalty in publicly criticizing the Iran arms sales. Weinberger's November 1986 diary notes contain numerous entries on this topic including entries, quoted below, indicating that Weinberger was being considered as a possible replacement for Shultz.

117/ Tab 57.

reporter's question, President Reagan stated that no third countries had been involved in the arms sales. But Donald Regan had already told reporters that the United States had acquiesced in a September 1985 shipment of arms from Israel to Iran. Accordingly, the White House was compelled to issue a correction of the President's statement. Weinberger noted that he "[w]atched President's Press Conference" and then "[c]alled President - to congratulate him on his Press Conference."

B. Concern Over Factual Errors

Shultz went to the White House the following day, November 20, with a list of factual errors the President had made in his press conference.[118/] In the presence of Regan, Shultz attempted to persuade the President that the public would never believe that the Iran arms sales were not an "arms-for-hostages" swap.[119/] Shultz raised the November 1985 HAWK shipment as an example and argued that the plan McFarlane had outlined to Shultz in Geneva was expressly described as a straight arms-for-hostages deal.[120/] President Reagan responded that he knew about the November 1985 shipment, "but that wasn't arms for hostages."[121/]

118/ Hill notes (Nov. 20, 1986), tab 58.

119/ Id.

120/ Id.

121/ Id. Shultz had briefly met with the President on November 19, before the press conference, but could not

(continued...)

The same day, Abraham D. Sofaer, the State Department legal adviser, intervened with Meese in an effort to prevent CIA Director Casey from giving false testimony to the intelligence committees denying U.S. knowledge of the November 1985 HAWK shipment.[122/] Casey's proposed testimony contained the assertion that, although the CIA had given the Israelis the name of a proprietary airline to carry the November 1985 shipment, no one in the U.S. Government knew that the shipment contained weapons.[123/] Sofaer knew this was false, because Hill had taken notes of McFarlane's conversation with Shultz in November 1985, outlining the planned arms-for-hostages HAWK shipment.[124/]

Although the broad assertion that "no one" in the U.S. Government knew about the shipment was removed from Casey's

121/ (...continued)
recall in his testimony whether he discussed the November 1985 shipment on the 19th or on the 20th. 9 Joint Hearings, at 44 (Testimony of George P. Shultz). Hill's notes of November 19 reflect that Shultz told the President his version of the 1985 HAWK shipment discussions: "Bud once told me about a plane of arms that w[oul]d go if host[a]g[es] released -- not if not. P[resident] knew of this -- but it didn't come off." Tab 59. On November 22, Shultz told Hill "I told P[resident] Thursday [November 20] of what Bud told me about Nov 85. He s[ai]d he knew it. When dug into -- will be shown that P[resident] pushed these people." Tab 60. Hill's notes thus suggest that Shultz on both November 19 and 20, 1986 discussed the 1985 HAWK shipment with the President.

122/ Congressional Report, Appendix B, vol. 26, at 264-65 (Testimony of Abraham D. Sofaer).

123/ Id., vol. 7, at 94-96 (Testimony of Charles J. Cooper).

124/ Id., vol. 26, at 258-60 (Testimony of Abraham D. Sofaer).

opening statement to the intelligence committees on November 21, Casey did not disclose that the administration had participated in the planning of the November 1985 HAWK shipment.[125/] Casey also failed to disclose the existence of the December 1985 Finding drafted by the CIA to authorize retroactively its participation in the transfer.[126/]

C. The Development of a Coherent Administration Position

Weinberger wrote in his diary notes for the morning of the 21st: "Met with President in Oval Office - with John Poindexter . . . also re Iran - I urged that we all stop talking about it."[127/] The same morning, Regan met with President Reagan, Meese and Poindexter. In that meeting, Meese explained the problem that had arisen with Casey's proposed testimony.[128/] The President authorized Meese to conduct an inquiry of the Iran arms sales and asked him to report his findings at a senior advisers meeting set for

125/ Casey SSCI Testimony, Tr. at 8-9, 31-32 (Nov. 21, 1986); HPSCI Testimony, Tr. at 5-7 (Nov. 21, 1986).

126/ Poindexter later testified that it was on this day that he destroyed the December 1985 Finding because it described a straight arms for hostages exchange and would be politically embarrassing. 8 Joint Hearings, at 18, 123.

127/ Tab 61. Earlier in the day Weinberger wrote in his diary notes: "Bill Clark [called] . . . also wants me to be Secretary of State + if he'd come back as N.S.C. adviser to President." Tab 62.

128/ 9 Joint Hearings, at 224-25 (Testimony of Edwin Meese).

November 24, 1986.[129] Meese claims that he did not ask the President on this or any other occasion whether he knew about the November 1985 HAWK shipment.[130] He described his undertaking as a fact-finding inquiry, not an investigation.[131] His objective was to develop for the administration a "coherent overview" of the facts.[132]

Meese called Weinberger early that evening. Weinberger noted in his diary: "Ed Meese [called] -- President has asked him to put together paper covering whole Iran Episode."[133] Meese later testified that he determined from this conversation that Weinberger could not contribute much information and that there was no need to interview him further.[134] The next day, Saturday, November 22, Weinberger wrote in his diary notes: "Met with Rich Armitage + Bill Crowe - re Bill Casey's testimony at Intelligence Committees - Possible illegal Israeli shipment via CIA carrier last Nov. (before any finding) to Iran[.]"[135]

[129] Id. at 225.

[130] See, e.g., id. at 225, 403.

[131] Testimony of Edwin Meese at trial of Oliver L. North, Tr. at 5714-15 (Mar. 28, 1989); OIC Interview of Edwin Meese, Tr. at 34-37 (May 11, 1992).

[132] 9 Joint Hearings, at 224-225.

[133] Tab 63.

[134] OIC Interview of Meese, Tr. at 61-64. Meese recalled that Weinberger had been at the hospital that day with his wife, who was recuperating from recent surgery. Id. at 61.

[135] Tab 64.

On Saturday, November 22, Meese and Assistant Attorney General Charles Cooper met with Shultz and his executive assistant, Hill. Hill's notes of the November 22 interview state that Shultz told Meese that President Reagan said he (the President) knew about the November 1985 shipment.[136] Meese stated that the President had no notes and had difficulty remembering meetings. Meese then asked if Shultz knew whether McFarlane had discussed the shipment with the President in Geneva. Shultz said he didn't know. Later in the interview, Meese told Shultz that "[c]ertain things c[oul]d be violation of a law. P[resident] didn't know about HAWKs in Nov[ember 1985]. If it happened & P[resident] didn't report to Congress, it's a violation."[137] Both of Meese's remarks regarding the President's knowledge are omitted from notes taken by Cooper, although contemporaneously included by Hill.[138]

The series of November meetings on the Iran arms sales culminated in the senior advisers meeting on Monday, November 24, at which Meese was supposed to brief the group on the results of his weekend inquiry. Those present were President Reagan, Vice President Bush, Shultz, Weinberger, Meese, Casey, Regan, and Poindexter.

136/ Tab 65.

137/ Id.

138/ See Cooper notes (Nov. 22, 1986), tab 66.

According to Weinberger's notes of the meeting, Don Regan asked whether "we object[ed] to" the November 1985 HAWK shipment.[139] (Having been present twice when McFarlane in November 1985 briefed President Reagan about the planned shipment, Regan must have known the answer to his own question.) Poindexter responded that, before December 7, 1985, McFarlane handled the Iran Initiative "all alone" with "no documentation." Meese then told the group that McFarlane had outlined the planned shipment to Shultz in Geneva and briefly recounted how the shipment had gone awry, resulting in the missiles being returned to Israel in February 1986. According to Weinberger's notes, Meese advised the group that the shipment was "[n]ot legal because no finding," but "President not informed."[140]

Weinberger should have known that Meese's statement regarding the President's knowledge was false, because McFarlane told Weinberger in November 1985 that the "President has decided to do it thru Israelis."[141] Shultz knew Meese's statement was false because the President had

[139] Tab 67.

[140] Id.

[141] Weinberger has since stated that he did not believe McFarlane when McFarlane said the President had decided to proceed with the shipment. See, e.g., Weinberger Interview, ABC "This Week with David Brinkley" NEXIS Tr. at 10 (Dec. 27, 1992). Had Weinberger believed McFarlane was acting without proper authority from the President, he would hardly fail to intercede with the President. Instead he had Powell identify available HAWKS.

told him only four days earlier that he knew about the November 1985 shipment. Meese knew his own statement was false because Shultz told him only two days earlier that the President had acknowledged he knew about the shipment. Regan had not only been present for Shultz's conversation with the President on November 20, 1986, but had also been present when McFarlane in November 1985 briefed the President about the plan on two separate occasions. President Reagan certainly knew the statement was false, since he told Shultz and Regan only a few days earlier that he knew about the November 1985 shipment. Casey and Poindexter both knew at least that President Reagan had attempted in December 1985 to validate retroactively the CIA's support for an arms-for-hostages transaction. Vice President Bush should have known the statement was false, because he was present for a national security briefing in 1985 at which McFarlane explained the HAWK shipment.[142/] No one corrected Meese's assertion that the President didn't know about the possibly illegal November 1985 HAWK missile shipment to Iran.

Meese stated at his November 25, 1986 press conference

[142/] Vice President Bush stated in a December 12, 1987 FBI interview that he recalled the September 1985 shipment from a national security briefing by McFarlane. Bush then went on, however, to describe a landing rights problem that arose with respect to the November 1985 shipment. Thus, although Bush confused the dates, it appears that he was recalling a national security briefing on the HAWK missile shipment either before or immediately after the November 1985 Geneva summit. Such briefings ordinarily included the President, Vice President, and chief of staff. FBI Record of Interview, at 2 (Dec. 12, 1986).

-- in which he announced news of the diversion of Iranian arms sales proceeds to the Nicaraguan Contras -- that the President did not learn of the November 1985 Iran arms shipment until February 1986. Within the small group of senior advisers, Shultz was isolated in insisting that both he and the President knew contemporaneously of the November 1985 HAWK shipment. In response to a question regarding the propriety of Shultz's public criticism of the arms sales, Meese stated at his press conference: "I think every member of the administration owes it to the President to stand shoulder-to-shoulder with him and support the policies that he has -- the policy decisions he has made[.]"[143]

D. President Reagan's Testimony

President Reagan's knowledge and approval of the November 1985 HAWK shipment remained uncertain through the Tower Commission inquiry.[144] By the time President Reagan

[143] Weinberger wrote in his diary notes on November 25:

> Bill Casey - on secure - thinks Shultz should go too . . .
>
> . . .
>
> Called Bill Clark in San Luis Obisbo [sic] - Bill Fr. Smith + Pete Wilson both will call President & urge that he dump Shultz[.]

Tab 68.

[144] President Reagan in late November 1986 appointed the three-member commission, headed by former Senator John Tower of Texas, to review the facts of the Iran/Contra affair and to advise him on the future role of the National Security Council and its staff.

met with the Tower Commission in January 1987, shortly after his prostate surgery, he may have become genuinely confused. In his first statement to the Tower Commission on January 26, 1987, President Reagan said he learned of the November 1985 shipment after the fact and had objected to it, demanding that the weapons be returned to Israel.[145/] This account tracked exactly the NSC staff false chronology prepared by Oliver North and others in November 1986. In his second statement to the Commission on February 11, 1987, President Reagan said he had since compared notes with Regan, and neither of them could remember any conversation or meeting about the November 1985 shipment.[146/] Then on February 20, 1987, President Reagan wrote to the Commission explaining that he had allowed his own recollection to be confused by others and simply could not remember any longer what had actually transpired.[147/]

[145/] Report of the President's Special Review Board (hereinafter "Tower Report"), at III-9 (Feb. 26, 1987).

[146/] Id.

[147/] President Reagan's letter is included in the Tower Commission records in the Reagan Presidential Library.

President Reagan did not seem particularly concerned about the illegality of the 1985 transactions before his meeting with Meese, Poindexter and Regan on November 21, 1986. He had become firmly convinced that the arms sales to Iran did not constitute an arms-for-hostages trade but rather were an effort to create an opening for the United States within Iran. The President insisted vehemently at every meeting, sometimes pounding the table for emphasis, that he had done nothing wrong and had nothing to hide. He had freely admitted to Shultz on November 20 that he had known

(continued...)

Although Regan told the Tower Commission that McFarlane had briefed the President in Geneva about the November 1985 shipment, he suggested that McFarlane had misconstrued the President's lack of objection as approval. Regan claimed the President had been "upset" about the earlier shipment of TOW missiles but, because he "hadn't raised Cain" about it, McFarlane took advantage of the President's lack of objection to pursue a second shipment.[148/]

McFarlane told the Tower Commission that, although he did not expressly ask the President's permission for the November 1985 shipment, the President had previously authorized cooperation with the Israeli arms sales and, notwithstanding further briefings, had never objected to them. McFarlane said he had briefed President Reagan and Don Regan before leaving for Geneva in November 1985 and he again briefed President Reagan and Regan as well as Shultz about the planned HAWK shipment in Geneva. He also said that he called Weinberger from Geneva. Shultz told the Tower Commission, based on Hill's November 22, 1985 notes, that McFarlane told Shultz he had "cleared" the shipment with the President.[149/]

[147/](...continued)
about the November 1985 shipment. On November 24, however, he too remained silent during Meese's presentation.

[148/] Tower Report B-38.

[149/] Id. at III-9.

The Tower Commission ultimately concluded that President Reagan had been informed in advance of both 1985 shipments and that "[o]n balance . . . it is plausible to conclude that he did approve them in advance."[150] Weinberger's November 19, 1985 note, which states that McFarlane told Weinberger the "President has decided to do it thru Israelis," would have provided additional contemporaneous evidence that the President had approved the shipment in advance. In his statement to the Tower Commission, as in his prior testimony to the intelligence committees, however, Weinberger did not disclose any of his conversations with McFarlane and claimed that McFarlane had deliberately withheld information from him because of his prior opposition to selling arms to Iran.[151]

E. Other Administration Officials

Although the evidence at Weinberger's trial would have focused on Weinberger and his motives, the trial would have exposed new evidence of the administration's efforts to conceal the facts of the Iran arms sales from the public and from Congress. A full discussion in this report is precluded because of grand jury secrecy requirements that would not have been applicable at trial. A more complete discussion may be expected in the Final Report.

150/ Id. at IV-9.

151/ See Weinberger Tower Board Tr. at 8-9.

Regan would have testified that he was concerned about the possibility of impeachment, and that when Meese stated in the November 24, 1986 meeting that the President did not have contemporaneous knowledge of the November 1985 HAWK shipment, Regan knew the statement was untrue.[152/] Shultz would have been a reluctant witness, but if he had been called, he would have testified to the contents of Hill's notes, which he had previously adopted as an accurate record of his activities. Hill's notes document Shultz's concern in November 1986 that the White House was attempting to "rearrang[e] the record" regarding the President's knowledge of the November 1985 HAWK shipment.[153/]

Administration officials called as defense witnesses, including particularly Meese and perhaps President Bush, would on public cross-examination have been subject to searching questions about the administration's conduct and their own in November 1986.

F. Significance of Weinberger's Notes

Weinberger's notes, if they had been properly disclosed to Congress, would have provided a significantly more complete picture of the administration's response to the public exposure of the arms sales in November 1986. For

152/ OIC pretrial interview (Dec. 8, 1992).

153/ Hill notes (Nov. 24, 1986), tab 69.

example, although the Select Committees questioned Meese closely about his November 21-24, 1986 inquiry, they did not question him about his remarks regarding the HAWK shipment at the November 24 meeting because they had no notes reflecting Meese's presentation.[154/] The Select Committees had only two contemporaneous records of the meeting -- Meese's notes and Hill's notes of Shultz's recollections immediately after the meeting. Meese's notes reflected Regan's question about the HAWK shipment and Poindexter's initial response, but they omitted Meese's own lengthy presentation as to illegality and President Reagan's lack of knowledge. The Hill notes, which were never explored fully by the Select Committees, show that Shultz and his aides were concerned that the White House was presenting an inaccurate account of the November 1985 shipment, but the Hill notes also do not set out Meese's remarks about the HAWKs.[155/]

[154/] See 9 Joint Hearings, at 253. The Select Committees criticized Meese for his remarks at the press conference, noting that Shultz had told Meese only days before that the President knew about the November 1985 HAWK shipment. Congressional Report at 317-18. Weinberger's notes show that Meese also asserted this position for the President's closest advisers.

[155/] Hill notes (Nov. 24, 1986), supra tab 69. Before the November 24 meeting, Shultz remarked to Hill: "They may lay all this off on Bud. That won't be enough." Reporting to his aides after the meeting, Shultz remarked that the President is "now saying he didn't know anything about Bud's Nov '85 activities," in contradiction to the President's statements to Shultz only a few days before. Platt notes (Nov. 24, 1986); see also Hill notes, supra, tab 69 ("P[resident] now saying he didn't know what Bud was up to."). Hill hypothesized that the White House was carrying

(continued...)

Weinberger's notes suggest that Meese was warning the President's advisers that to disclose the President's knowledge of the HAWK shipment would expose him to a charge of illegal activity.[156] The notes also suggest that Poindexter's statement that McFarlane had "no documentation" and had "handled this all alone" would afford the President deniability. Congress, by November 24, 1986, had already announced its intention to hold hearings on the Iran arms sales, and initial briefings had already taken place. Meese's uncontradicted remarks in the senior advisers meeting, in the absence of other explanation, left standing as the "coherent" administration position, that the President did not have advance knowledge of the November 1985 HAWK shipment.

Although Hill's notes of Meese's November 22, 1986 interview with Shultz were produced to the Select Committees, neither Shultz nor Meese was asked about Meese's assertion in that interview that the President didn't know about the

155/ (...continued)
out "thru Meese" a "carefully thought out strategy" to "blame it on Bud." Platt notes (Nov. 24, 1986).

156/ In the weeks following Meese's press conference, lawyers in the State Department and the Justice Department ultimately concluded that they could provide a legal justification for the November 1985 shipment on the theory that the President could make an oral National Security Finding. See Memorandum for the Attorney General from Charles J. Cooper, "Legal Authority for Recent Covert Arms Transfers to Iran" (Dec. 17, 1986; Memorandum to The White House Counsel from Abraham D. Sofaer, "Validity of Oral Instruction to Initiate Covert Action" (Dec. 11, 1986).

possibly illegal HAWK shipment. Ironically, the State Department had anticipated, and prepared answers for, a series of questions about the interview, including the following:

> Q: On Saturday, November 22, 1986, Mr. Meese said to you that the President did not know about the 1985 Hawk shipment when it occurred.
>
> A: Yes. Mr. Meese said that to me at that meeting. But I had already told Mr. Meese in that same Saturday, November 22, 1986 meeting that the President had told me he knew.
>
> Q: Was Mr. Meese trying to get you to change your recollection?
>
> A: You'll have to ask Mr. Meese.[157]

The Select Committees did not obtain a clear picture of what had occurred. In words that have renewed relevance, they reported in November 1987 that "the Committees reject any notion that worthy ends justify violations of law by Government officials; and the Committees condemn without reservation the making of false statements to Congress and the withholding, shredding, and alteration of documents relevant to the pending inquiry."[158]

[157] Tab 70.

[158] Congressional Report, at 19.

VII. THE PRESIDENT MISUSED THE PARDON POWER IN GRANTING CASPAR WEINBERGER A PRE-TRIAL PARDON

Under Article II of the United States Constitution, the President has an undisputed prerogative to issue pardons. The Independent Counsel believes, however, the Weinberger pardon was a misuse of this power.

A pre-trial pardon differs from a post-conviction pardon in one critical respect: A pre-trial pardon preempts public disclosure and examination of the facts underlying the criminal charges brought by the prosecution. When a high-ranking government official is charged with committing serious crimes in office, the American people have an important interest in a judicial determination of the official's guilt or innocence. Centuries of experience in the Anglo-American legal tradition have shown that the best way to reach a final resolution of whether a person committed a crime is through a public trial, with a neutral judge presiding, guided by established rules of evidence, and with citizens sitting on the jury, the ultimate arbiter of guilt. In preventing this process from going forward, President Bush did a grave disservice to the citizens of this country. Now, the unclassified facts of the case against Weinberger can be publicly discussed and perhaps be the subject of congressional hearings; but these fora, while appropriate for policy debates, are not ideal for reaching a final resolution of a person's guilt or innocence.

The Attorney General has issued regulations which, although they do not bind the President, are designed to ensure a fair and appropriate use of presidential pardons. Under these regulations, pre-trial pardons are completely unavailable; rather, individuals seeking pardons must wait until they have been tried, convicted, sentenced, and have served their sentences, plus an additional period of years -- seven years for those convicted of particularly egregious crimes, including perjury -- before their pardon petitions will even be considered.[159/] Because President Bush disregarded these standard procedures and granted Weinberger a pre-trial pardon, President Bush cannot escape the appearance that he wished to avoid the public airing of facts about Iran/Contra that would have occurred at trial.[160/] Because Weinberger sought the pre-trial pardon, he cannot escape the appearance that he chose not to contest his own

[159/] 28 C.F.R. § 1.2

[160/] According to White House records, President Bush was informed (erroneously) through Weinberger's counsel William Clark that "Walsh and Brosnahan plan to have Bush and Reagan testify." In a memorandum to President Bush from Henry Catto, Weinberger's former spokesman, dated December 18, 1992, Catto stated: "Late in the afternoon, Bill Clark called me (he is helping Cap as co-counsel). He said Walsh and Brosnahan plan to have Bush and Reagan testify. He said his team had tested the waters as to how the Democrats and the press would view a pardon and had concluded that the reaction would be mild."

guilt rather than to proceed to trial in order to assert his innocence.[161/]

It was widely reported in 1987 and 1988 that President Reagan considered -- and ultimately decided against -- granting pre-trial pardons to Iran/Contra defendants. At that time, Vice President Bush opposed the pardons, stating that pre-trial pardons of the Iran/Contra defendants would be "premature":

> A pardon imputes guilt The American system, after all, is innocent until proven guilty. ... My own personal hope is that they are found innocent of any wrongdoing. So if I start talking about a pardon I think that suggests to people

[161/] With the exception of general amnesties -- which are far afield from President Bush's pardon of Weinberger -- pre-trial pardons are extraordinarily rare. According to the Department of Justice's Office of Pardons, in the past thirty years, presidents have granted thousands of pardons, but only four have preceded conviction. The most prominent of these, of course, was President Ford's pardon of Richard Nixon. That pardon was extremely controversial, in part because it prevented full disclosure of President Nixon's involvement in the crimes committed in the Watergate scandal. But it did serve important public purposes: It completed the orderly transition of presidential power and began the nation's political healing process after an extraordinary constitutional crisis. No such public purpose appears to have been served by President Bush's pre-trial pardon of Weinberger.

The other three pre-trial pardons did not involve criminal prosecutions at all. Rather, all three pardons were given to career federal government employees who were denied federal pensions under the Hiss Act, which renders ineligible for a federal pension any government employee who, inter alia, falsely stated on his employment application that he had never been affiliated with the Communist party. See 5 U.S.C. § 8315. Although the three were not under indictment for these crimes, which had been committed many years before, the pardons allowed the three to receive their federal pensions.

> out there that there is something to pardon somebody from. I'm not going to get into that.[162]

President Bush also misused his power by granting the pardon to Weinberger without first consulting Independent Counsel to learn the facts of the case. Pardons are ordinarily granted after a trial in which the factual record has been fully developed. In such a case, the President or his staff can rely on the trial record. In the case of a pre-trial pardon, however, there has been no public factual development. If the President cares about the facts of the case, he or his staff must consult the prosecution; otherwise, the only information the President will receive will be self-serving information from the defendant (or, in a prosecution brought by an independent counsel, information from an uninformed Department of Justice).

[162] Bush Hopes Iran Figures Acquitted, Washington Post, A20 (Apr. 13, 1988).

Indeed, before his own indictment, even Weinberger opposed pre-trial pardons for Iran/Contra defendants. On August 14, 1987, Weinberger made the following entry in his daily diary notes:

> Frank Carlucci f[ro]m Santa Barbara -- secure to plane -- President may be leaning to Pardoning Poindexter, North, McFarlane -- Told him I thought it was a terrible idea -- Would confirm suspicions President kn[ew] about their activities, etc.

See tab 71.

President Bush, however, failed to communicate with Independent Counsel before he decided to grant a pre-trial pardon to Weinberger. Independent Counsel was notified only a few minutes before the formal announcement of the pardon. President Bush's unconcern for the facts of the case -- including the overwhelming evidence that Weinberger committed serious crimes -- manifests an absolute disdain for the rule of law.

Finally, President Bush disregarded the purpose of title VI of the Ethics in Government Act, which seeks to give public assurances of impartiality in the enforcement of the law against high ranking officials. The basic premise underlying the appointment of Independent Counsel is that the President and the Attorney General cannot credibly investigate themselves and other high-ranking officials in the executive branch. In December 1986, President Reagan and his Attorney General acknowledged the conflict of interest in an executive branch investigation of Iran/Contra and so requested the appointment of an Independent Counsel. Despite that acknowledgement of a conflict of interest, and despite President Bush's own involvement in the facts underlying Iran/Contra, President Bush granted a pre-trial pardon to an individual charged by that same Independent Counsel. It seems inconsistent to recognize that executive branch bias disqualifies the Attorney General from investigating and prosecuting certain individuals while simultaneously

believing that this identical executive branch bias is not present when the President grants pre-trial pardons that prevent the trial of the same individuals. In essence, President Bush indulged in the very type of act that the Independent Counsel law is designed to prevent: an act by the President that in appearance or reality frustrates the exposure and orderly prosecution of executive branch wrongdoing.[163/]

163/ See also Statement of Independent Counsel (Dec. 24, 1992) (responding to pardons). Tab 72.

VIII. THE WEINBERGER INDICTMENT DID NOT REPRESENT "CRIMINALIZATION OF POLICY DIFFERENCES"

The principal reason President Bush cited for granting pardons was that the criminal charges against those pardoned represented "a profoundly troubling development in the political and legal climate of our country: the criminalization of policy differences."

This assertion, memorialized in a Presidential Proclamation, attempts a fundamental devaluation of Iran/Contra: that it was not a crime at all, but simply a manifestation of a policy difference between the executive and legislative branches. Independent Counsel was appointed at the request of Attorney General Meese and with strong public support from President Reagan "to investigate whether violations of federal criminal law were committed." In their final report the Select Committees also left this evaluation to Independent Counsel and the Courts. In the course of the investigation that followed, 14 persons were charged criminally. Four were convicted of felony charges after trial by jury, seven pleaded guilty either to felonies or misdemeanors, and one (Fernandez) was dismissed after the Attorney General refused to declassify documents ordered disclosed by the trial judge. Two of the convictions were reversed on appeal not for lack of proof, but because of immunity granted by Congress; two of the cases - those of Weinberger and Clarridge - were awaiting trial when the pardons were announced. None of the 14 persons was charged

with "policy differences." No court has suggested they were. Each was charged with classic violations of the federal criminal code such as perjury, obstructing and withholding information from Congress, conspiracy, tax fraud, and theft of government property.

The suggestion that the Independent Counsel's investigation sought to "criminalize policy differences" first arose in the Minority Report of the Select Committees and then in early dismissal motions filed by Oliver North's defense attorneys. North contended that the conspiracy and lying-to-Congress charges were rooted in policy differences between the Congress and the Administration over Contra aid. This was true but irrelevant. There was indeed extensive, hard-fought debate over Contra aid, but the Reagan administration decided to ignore the lawful outcome of that debate. In October 1984, the Reagan Administration began to circumvent and ultimately violate the lawful ban on government aid to the Contras by secretly using National Security Council staff and foreign government donations to the Contras to re-arm and support them.

In November 1988, the Reagan Administration joined North in an unsuccessful attempt to have Judge Gerhard A. Gesell dismiss the central conspiracy charge. Attorney General Thornburgh filed an amicus brief to assert that it "potentially criminalize[d] any political dispute" between

the executive branch and Congress.[164] Judge Gesell, in tandem decisions, struck down the argument as baseless, and noted that the Reagan Administration's contention was contrary to fact. "Whatever their [the Reagan Administration's] doubts as to the constitutional propriety" of the laws violated by North and others, wrote Judge Gesell, President Reagan and the White House staff "were functioning in respect to pertinent aspects of this case as if they were in compliance" with the law -- including responding to congressional inquiries about compliance. The Reagan Administration legitimately could have chosen to challenge these laws openly, but, Judge Gesell observed, it had not done so.[165]

When Congress called upon Reagan Administration officials to say whether they were complying with the ban on Contra aid and other laws, the Administration and its employees had only two legal options: telling the truth or refusing to answer on grounds of privilege. They could not falsely deny facts showing violations of the law. Judge Gesell expressed this forcefully:

> It is essential that Congress legislate based on fact, not falsifications, in the realm of foreign

[164] Memorandum of Law of the United States filed by the Department of Justice as Amicus Curiae with respect to the Independent Counsel's opposition to the Defendant's Motions to Dismiss or Limit Count One, United States v. North, Crim. No. 88-0080-02-GAG, at 4 (D.D.C. Nov. 18, 1988).

[165] United States v. North, 708 F.Supp. 375, 378 (D.D.C. 1988).

> affairs as well as in domestic legislation. If Congress is increasing its power in a manner that infringes upon the President's prerogatives, the President may assert executive privilege or direct (his subordinates) not to answer. ...The thought that any one of the hundreds of thousands of persons working for the President can affirmatively and intentionally mislead Congress when it seeks information to perform one of its assigned functions for any reason...is unacceptable on its face. Such a disdainful view of our democratic form of government has no constitutional substance.[166/]

Judge Harold H. Greene reaffirmed this point in sentencing Poindexter and rejecting his submission that he was found guilty only of being caught up in a policy dispute between Congress and the Executive Branch:

> Whatever may have been the nature of the original dispute, what the defendant and his associates did was emphatically not a part of the normal political process. Our system of government, with three separate branches, depends for its proper functioning, if not on cooperation, at least on an absence of active and willful obstruction. The President is entitled to accurate and complete information from his subordinates; the perjury laws are designed to ensure that witnesses will not lie in court; and the Congress cannot fulfill its constitutional duties if its operations are obstructed by high officials.
>
> These concerns take on a special dimension in the area of classified information. Obviously, in this still dangerous world, the United States could not be effective, perhaps it could not survive, if information on intelligence methods and sources and the nature of sophisticated weapons could not be kept secret. But much of the truly sensitive information is available in practice only to relatively few in intelligence and security circles. If members of the security apparatus

166/ Judge Gesell's decision was unaffected by the subsequent reversal of North's conviction, which was based on different grounds. United States v. North, 910 F.2d 843, as modified, 920 F.2d 940 (D.C. Cir. 1990), cert. denied, 111 S. Ct. 2235 (1991).

> could, with impunity, keep from those elected by the people that which they're entitled to know--or worse, feed them false information--those who control the classified data would be the real decision makers. That is precisely what happened here.
>
> When Admiral Poindexter and his associates obstructed the Congress, what were they seeking to accomplish? In a word, it was to nullify the decision that body had made on the issue of supplies to the Contras. Congress fought about, was lobbied on, voted on the question of possible restrictions on military aid to the Contras for several years, and these votes were won or lost by one side or the other depending on individual lawmakers' approach to the merits of the issue, the conditions in Nicaragua on the ground, and what the American voters were telling their representatives.[167]

In our constitutional system, serious and formal dealings among the branches of government -- and, more broadly, between our government and the people -- must be conducted truthfully. Disinformation by national security officials is not and cannot be an exception to the rule. The constitutional checks upon the Executive Branch depend for their effectiveness upon the honesty of responses to proper congressional or judicial inquiries.[168] Decades-old

[167] United States v. Poindexter, Crim. No. 88-0080-01 (D.D.C. 1990). The reversal in Poindexter was on other grounds. There was no suggestion of disagreement with the views of Judge Greene.

[168] As Justice Van Devanter wrote in McGrain v. Daugherty, 273 U.S. 135, 174-75 (1927):

> [T]the power of inquiry--with process to enforce it--is an essential and appropriate auxiliary to the legislative function. . . . A legislative body cannot legislate wisely or effectively in

(continued...)

statutes passed by the Congress, signed by the President and upheld by the federal courts, embrace this necessary principle of non-autocratic and efficient government.[169] To ensure that honest responses are given to legitimate inquiries, these statutes provide for enforcement with criminal penalties.[170]

[168] (...continued)

> the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information--which not infrequently is true--recourse must be had to others who do possess it.

The Court further observed that Congress's power of inquiry extends beyond investigations directly in aid of legislation. Rather, Congress has the right to question executive officers when "the subject [is] one on which legislation could be had and would be materially aided by the information which the investigation [is] calculated to elicit." Id. at 177.

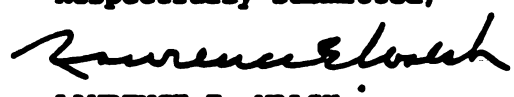
[169] See, for example, 18 U.S.C. §§ 1001, 1503, 1505, 1621 and 1623; United States v. Bramblett, 348 U.S. 503, 505-09 (1955) (upholding application of § 1001 to false statements to Congress); United States v. Rogers, 466 U.S. 475, 479, 484 (1984) (citations omitted) (upholding application of § 1001 to false statements made to federal law enforcement agents; § 1001 enforces "valid legislative interest in protecting the integrity of official inquires"); United States v. Cohn, 452 F.2d 881 (2d Cir. 1971) (applying § 1503 to withholding of information from grand jury), cert. denied, 405 U.S. 975 (1972); United States v. Mitchell, 877 F.2d 294 (4th Cir. 1989) (congressional committee inquiries protected by § 1505); United States v. Norris, 300 U.S. 564 (1937) (§ 1621 punishes perjury before Congress); United States v. Wong, 431 U.S. 174 (1977) (§ 1623 properly protects grand jury inquiries from perjury).

[170] See United States v. North, 708 F. Supp. 380, 382-84 (D.D.C. 1988) (§ 1001), rev'd on other grounds, 910 F.2d 843, as modified, 920 F.2d 940 (D.C. Cir. 1990), cert. denied, 111 S. Ct. 2235 (1991); United States v. North, 708 F. Supp. 385, 386 (D.D.C. 1988) (§ 1505), rev'd on other grounds, 910 F.2d (continued...)

IX. CONCLUSION

In his statement announcing the pardon of Weinberger and five other Iran/Contra defendants, President Bush alleged that Independent Counsel was engaging in improper, politically motivated prosecutions. President Bush was wrong. As Independent Counsel has documented in this Interim Report, there was overwhelming evidence that Weinberger committed serious crimes in making false statements and concealing evidence from congressional investigators and federal prosecutors. Because President Bush's pre-trial pardon of Weinberger prevented the disclosure at a public trial of evidence of Weinberger's conduct, as well as evidence that raises questions about the conduct of other high-ranking officials in the Reagan Administration, it was an inappropriate use of the pardon power.

Respectfully submitted,



February 8, 1993

LAWRENCE E. WALSH
Independent Counsel

[179] (...continued)
843, as modified, 920 F.2d 940 (D.C. Cir. 1990), cert. denied, 111 S. Ct. 2235 (1991); United States v. Poindexter, 725 F. Supp. 13, 24-25 & n.14 (D.D.C. 1989), rev'd on other grounds, 951 F.2d 369 (D.C. Cir. 1991), cert. denied, 113 S. Ct. 656 (1992); Memorandum Opinion & Pretrial Order #12, United States v. George, Crim. No. 91-521 (RCL), slip op. at 8 (D.D.C. May 18, 1992); United States v. Clarridge, Crim. No. 91-665 (HHG), slip op. at 43-45 (D.D.C. Dec. 10, 1992) ("it is difficult to imagine . . . that the allegedly false statements at issue have had any purpose but to impair the essential functions" of investigating committees and boards).

FOURTH INTERIM REPORT TO CONGRESS

BY INDEPENDENT COUNSEL FOR IRAN/CONTRA MATTERS

Appendix: Weinberger's Handwritten Notes Regarding the Iran Initiative, July 1985 - November 1986

Former Secretary of Defense Caspar W. Weinberger's handwritten notes, which never were produced to Congress despite its repeated requests for such documents, outline many aspects of President Reagan's Iran initiative during 1985 and 1986.

A. Origins of the Iran Initiative

Documentary evidence of Weinberger's knowledge of proposals to send arms to Iran begins in June 1985. On June 17, Robert C. McFarlane, President Reagan's National Security Adviser, sent a six-page draft memorandum -- a proposed National Security Decision Directive (NSDD) entitled "U.S. Policy Toward Iran" -- to Secretary of State George P. Shultz and to Weinberger. Among other things, the McFarlane memorandum proposed "provision of selected military equipment as determined on a case-by-case basis." The next day, Weinberger scrawled the following note to his Senior Military Assistant, Major General Colin L. Powell, in response to McFarlane's memorandum:

> This is almost too absurd to comment on - By all means pass it on to Rich[1/] - but the assumption here is 1) that Iran is about to fall + 2) we can deal with them

1/ Richard L. Armitage, Assistant Secretary of Defense for International Security Affairs.

on a rational basis - It's like asking Quadhaffi to Washington for a cozy chat

On July 15, 1985, Weinberger made his first diary entry concerning this initiative: "Saw Colin Powell - re proposed Iran." The next day, Weinberger sent a three-page memorandum in response to McFarlane, with a copy to Shultz.[2/]

Weinberger's diary entries during August 1985 began to record the Iran initiative in greater detail. On August 6, 1985, which witnesses including Weinberger have identified as the date of a White House meeting regarding the Iran initiative, Weinberger's diary entries show two discussions involving National Security Council members but do not record their discussion of the Iran initiative:

Briefed President - in Oval Office - on SIOP changes - Vice President [Bush], Don Regan, Bud McFarlane, Jack Vessey + CWW [Weinberger] -

...

Secure Conference Call - Vice President, Shultz, Bud McFarlane, Bill Casey, Jack Vessey - re [*policy option regarding Libya*][3/]

[2/] On July 23, 1985, shortly after President Reagan's cancer surgery, he discussed the Iran initiative in the White House Residence with senior advisers shortly before meeting with a senior official of the Peoples Republic of China. Weinberger's diary records the later meeting ("Met with President + President Li of China - in Blue Room - President's first appearance since his illness"), but does not mention the earlier meeting regarding the Iran initiative.

[3/] In this and other instances where Weinberger's diary and meeting notes contain classified information that has not been approved for public release, unclassified substitute language that has been approved by the Executive Branch intelligence agencies is contained in brackets and italicized.

B. Initial Deliveries and the Release of the Reverend Weir

On August 22, 1985, Weinberger made the following entries, describing explicitly for the first time the Iran initiative:

> Bud McFarlane fm AF1 [Air Force One] - wants to meet with me tonight -
>
> ...
>
> Bud McFarlane, Charles Gabriel, CP [Colin Powell] in office. Peres sent Israeli Envoy to tell us 2 Iranians offered to return some of our kidnappees - want us to have better attitude toward Iran after Khomeni - I argued that we tell them we wanted all hostages back

The next day, Weinberger wrote:

> Conference call - with Bud McFarlane + General Gabriel - on Iranian proposal to let us have our Kidnappees - agreed we should deal directly with Iranians + not thru Israelis + that we should get guarantees that we'll get them all - + take them off w helos fm Tripoli Beach

On August 24, 1985, Weinberger again noted plans for release of the hostages:

> Colin Powell - re ... preparations to get our hostages if Iranians release them

On August 26, Weinberger's diary note shows continued activity in anticipation of a hostage release:

> General Gabriel - Acting CJCS [Chairman of the Joint Chiefs of Staff] in office - re our readiness to carry out return of our hostages if offer of Iranians is genuine -

On August 29, Weinberger (who was at his residence in Maine for the Labor Day weekend) recorded additional Iran initiative developments in his diary:

> Bud McFarlane on secure - Iranians who offer to give us back our hostages want meeting in Vienna next Wed [September 4, 1985]. He asked for Defense representative
> Called Jack Vessey in Washington - out
> " Art Moreau " " They have suggested [*U.S. military officer*] for the Representative to meet in Vienna -
> ...
> Called Bud McFarlane in Washington - re [*U.S. military officer*] OK -
> ...
> " Will Taft in Washington - re [*U.S. military officer*];

In September 1985, Weinberger continued to chronicle aspects of the Iran initiative in his diary notes. On Tuesday, September 3, Weinberger made the following diary entries:

> Jack Vessey in office - re ... Vienna meeting with Iranians on hostage release
> ...
> Jack Vessey + [*U.S. military officer*] in office re plans to meet in Vienna with Iranians offering to give us back hostages + plans to cover actual release

The next day, Weinberger made an additional diary entry on the same topic:

> Jack Vessey in office - re ... [*U.S. military officer's*] Mission to Vienna on hostage recovery -

On September 6, Weinberger noted:

> Jack Vessey in office - ... also re [*U.S. military officer's*] mission to see if Iranians will release our hostages -

On September 11, Weinberger wrote:

> Saw Bud McFarlane - add'l arrangements suggested by Israeli go-between ~~to~~ with Iran over release of our hostages
>
> ...
>
> Bud McFarlane - says Iranians told Israelis our 7 hostages would be released in 3 groups to Amb. Bartholomew [U.S. Ambassador to Lebanon] + we will extract them by helicopter to ARG MAU [Amphibious Ready Group Marine Amphibious Unit] offshore
>
> Saw Colin Powell, Admiral Moreau - re above - to get ARG MAU moving toward Lebanon
>
> ...
>
> General Gabriel in office --- re ... extraction of hostages and movement of ARG MAU -

On September 12, Weinberger made the following diary note:

> General Gabriel in office - re moving carriers to E. Med. [Eastern Mediterranean] instead of ARGMAU - to support possible return of hostages in Lebanon -

On Saturday, September 14, 1985, Weinberger noted early reports of a hostage release:

> Called Colin Powell - 1st report - 1st hostage out + ~~being transferred to US Embassy [illegible] for helicopter~~
>
> Bud McFarlane - secure - same - 1st hostage will be taken to US Embassy - fm Am U. Beirut - + then by helicopter to carrier - Buckley to come out Monday

The next day, Sunday, September 15, 1985, Weinberger's diary contains a detailed series of entries about the first hostage released as a result of the Iran initiative, the Reverend Benjamin Weir:

> Colin Powell - [*military rescue planning information*] - 1st hostage out - Rev. Weir seems OK ~~is~~ + is in US Embassy compound - accepts fact that he cannot communicate with family until all are out
> Appeared on CBS "Face the Nation"
> Colin Powell - }
> Called Colin Powell } re Islamic Jihad call saying our 2 US hostages had been released ok - we should try to work out Adm[inistration] statement - because families will start demanding all facts, etc -
> Called Bud McFarlane - busy; lw [left word]
> Bud McFarlane - says Weir was carrying letters fm 4 others saying they would be killed if Weir did not get release of DAWA prisoners in Kuwait + that Buckley would be brought fm Teheran to Cyprus tonight - Mrs Weir will go to Frankfurt despite all urging not to - also strict "no comment" rule in effect - agreed
> Called Colin Powell - re above - they have delayed sending [] troops to avoid visibility now with everything focused on it as result of Weir disclosures - Told him we had to have troops ready [] to cover a beach if necessary, + that troops should come fm [] - in event they were needed in a hurry
> Colin Powell (2) - Everyone wants to keep [] forces together + use them instead - I sd I did not want a [] gap which we could not cover if all we had were troops waiting at [*CONUS location*] - ~~also~~ But I did not want big ~~alert~~ stories about our flying troops over, which could put off ~~deliveri~~ deliveries -- Colin

~~says~~ called to say CONUS troops would now be moved to [*European location*] - I responded I did not mind their being kept at [*CONUS location*] but I wanted to use troops in [*European locations*] - but I did not want ~~a~~ a [] gap that would force us to ask for postponement of a delivery I have for our prisoners

...

Bud McFarlane - They have persuaded Mrs. Weir to meet Rev Weir at CIA [*facility*] - we can get Weir fm Sigonella to CIA [*facility*] w/o notice - Buckley due in Cyprus tonight

Called Colin Powell - re above - []

On Monday, September 16, 1985, Weinberger continued to record aspects of the unfolding Iran initiative:

<u>In office 735 Am - 1050 Am</u>

Saw Colin Powell - no news of release of Buckley - he was not delivered to Cyprus on time

...

<u>In office - 1135 Am - 110 Pm</u>

General Gabriel + Art Moreau in office - Mrs Weir is causing a lot of trouble + is very volatile - President thought it better for her not to be taken to [*CIA location*], but to Navy facility nearby - Weir will be in tonight - no word on Buckley -

Called Bud McFarlane - re above -

...

<u>In office 210 Pm - 6 Pm</u>

...

Colin Powell - Mrs Weir now refuses to go to Navy [*facility*] + insists on going to a motel ~~so she~~ because she ["]won't take anything from this Government" - Hope she won't go public before her husband - arrives tonight

On Tuesday, September 17, 1985, Weinberger's diary entries contain additional Iran initiative activity:

Lunch with Family Group [McFarlane, Casey and Shultz] in WH Sit Room [White House Situation Room] - re hostage releases + problems with Mrs Weir - no release of Buckley yet - Kimche is Israeli go between - also re Strategic Defense - sales of planes by UK to Saudis + our Saudi + Jordan packages -
In office 140 Pm - 220 Pm
Saw Colin Powell - re [*intelligence reports*] of Iranians [] hostage release - [*DoD component*] did not send it to us - will hereafter - also re Mrs Weir - she + husband - hostages - still at Norfolk hotel

On September 19, Weinberger's diary entry indicates his awareness that the Iran initiative was continuing:

Called Bud McFarlane - to get appointment for President to see Strategic Defense briefing - also he'll try again with his Iranian-Israeli contacts on remaining US hostages

On September 20, 1985, Weinberger wrote:

Saw Colin Powell - re strange [*intelligence reports*] about our hostages - the [*Iranians*] seem to think they are getting arms
Called Bill Casey - he too is surprised by [*the reports*] + suspects Bud [McFarlane] is not telling us all he knows or has promised.
...
Called Bud McFarlane - out; l.w. [left word]
...
Bud McFarlane secure - urged that we get time for Felipe Gonzalez of Spain to meet with President

On September 23, 1985, Weinberger's diary entry suggests that the prospects for additional hostage releases had diminished:

Met with General Gabriel - acting CJCS -
No - real need to keep our alert
forces in [*specific locations*]
unless any new word is received
about possible release of our
hostages -

On September 25, 1985, Weinberger noted:

Jack Vessey in office - re ... Keeping a
few of our [], sent to Sigonella
+ carrier for hostage return a short
time longer; etc.

On September 26, 1985, Weinberger made these diary entries regarding the Iran initiative:

Called Bud McFarlane - out; l.w [left
word]
...
Jack Vessey in office - re standing down
forces assembled for return of
prisoners;
...
Bud McFarlane - rmc [returned my call] -
Told him we would stand down forces
assembled for release of prisoners -
No more progress on that front
Saw Jack Vessey - re above

On Sunday, September 29, 1985, Weinberger's diary note suggests that he was continuing to monitor the hostage situation:

Called Cables
" Colin Powell - no further activity

On October 3, 1985, Weinberger's diary contains the following entry:

Colin Powell in office - with
[*intelligence reports*] about
Iranians claiming arms transfers by
us for return of prisoners

On October 4, Weinberger made the following diary entry after hosting his weekly Friday breakfast with senior CIA officials:

> Breakfast with Bill Casey + John McMahon + Will Taft - re Israeli bombing of Tunis - + UN resolution; Ollie North's negot. with Iranians - told them no US arms to be sold or given to Iran.[4]

C. November 1985: The HAWK Missile Shipment

Weinberger's diary notes demonstrate his detailed contemporaneous knowledge of the planned HAWK missile shipment in November 1985. McFarlane informed Weinberger of a new phase in the arms-for-hostages initiative on Saturday, November 9, 1985. After their conversation, Weinberger made the following note in his diary:

> Bud McFarlane ... wants to start "negot." exploration with Iranians (+ Israelis) to give Iranians weapons for our hostages - I objected - we'll talk later on secure.

The next day, after speaking again with McFarlane about the latest proposal to ship arms to Iran, Weinberger made this note:

[4] In his memorandum for the record regarding this Friday breakfast meeting, which was dictated the following Monday, DDCI McMahon's account of this discussion, unlike Weinberger's note, does not mention the Iran initiative or Oliver North's activity: "The question of arms flowing from Israel to Iran came up. The Director [Casey] noted that he had read an article in London about the Israelis having sold the Iranians $800 million worth of arms."

> Bud McFarlane ... - negotiations are with 3 Iranian dissidents who say they want to overthrow government. We'll demand release of all hostages. Then we might give them - thru Israelis - Hawks but no Phoenix.

One week later -- when McFarlane was in Geneva with President Reagan for a summit meeting with Soviet President Gorbachev and Weinberger remained in Washington -- McFarlane again contacted Weinberger about the proposed HAWK missile shipment. On November 19, Weinberger made a diary note of McFarlane's specific request for 500 HAWK missiles from DoD stocks:

> Bud McFarlane fm Geneva - update on [summit] meetings - all OK so far - Also wants us to try to get 500 Hawks for sale to Israel to pass on to Iran for release of 5 hostages Thurs.

In response to McFarlane's request, Weinberger asked Powell to obtain information regarding the availability of HAWK missiles for shipment to Iran and the legal restrictions that would apply to such a transaction. Powell promptly obtained the requested information and reported back to Weinberger later the same day:

> Colin Powell in office re data on Hawks - can't be given to Israel or Iran w/o Cong. notification, - breaking them up into several packages of 28 Hawks to keep each package under $14 million is a clear violation

Weinberger, in turn, passed this information to McFarlane in Geneva. Weinberger made the following diary entry:

Called McFarlane in Geneva - re above -
he "thanks me for call" -

The next day, McFarlane informed Weinberger that President Reagan had decided to approve the proposed HAWK missile shipment to Iran through the Israelis. Weinberger recorded the President's decision in his diary as follows:

Bud McFarlane rmc. [returned my call] fm
Geneva (2) - he hasn't heard of
request for logistical support for
hostages - return - Told him we
shouldn't pay Iranians anything - he
sd President has decided to do it
thru Israelis.

Later that day, McFarlane called to give Weinberger further details on the planned HAWK missile shipment, which Weinberger again recorded in his diary:

Bud McFarlane fm Geneva - working on
broad agreement language - Israelis
will sell 120 Hawks, older models to
Iranians - Friday [hostage] release
Called Colin Powell - re above

On Thursday, November 21, 1985, Weinberger made additional diary entries regarding the efforts to recover the hostages:

In office 720 Am - 105 Pm
Saw Colin Powell - full statements of
Geneva meetings, agreements, etc -
OK - also re Hawks for Israel-Iran
...
Admiral Crowe in office - re President's
decisions at Geneva - hostage rescue
attempts -

On Friday, November 22, 1985 -- after President Reagan had returned to Washington from Geneva -- Weinberger noted his attendance at a meeting of senior officials:

Attended Cabinet Meeting on Results of
President's meeting with Gorbachev -

On Saturday, November 23, Weinberger made a diary note of his call from his home to Powell:

> Colin Powell - ... no hostage release last night

On Monday, November 25, 1985, Weinberger's diary contains a final note regarding this phase of the Iran initiative:

> Admiral Crowe in office - ... also re Iranian ~~host~~ held hostages

Weinberger also received United States intelligence reports confirming that weapons had been shipped to Iran on November 24, 1985. Subsequent intelligence reports made clear that these weapons had been HAWK missiles.

D. United States Government Meetings and Activities Regarding the Iran Initiative, December 1985 and January 1986

After spending the Thanksgiving weekend in Maine, Weinberger flew to Europe in early December 1985 to conduct NATO business. On December 5, 1985, Weinberger, in London, made the following diary entry at the end of the day:

> Colin Powell in room - re meeting Saturday with President on Iran hostages + TOW's

The next evening, after returning to Washington, Weinberger again noted this upcoming meeting:

> Colin Powell - re meetings @ WH tomorrow on Iran, hostages + Israelis - ...

On Saturday, December 7, 1985, Weinberger made detailed diary entries regarding the Iran initiative:

In office 850 Am - 945 Am
Met with Colin Powell + Rich Armitage - re NSC Plan to let Israelis give Iranians 50 Hawks + 3300 TOWs in return for 5 hostages - NSC will present it as a means of helping group that wants to overthrow gov't - But no ~~assu~~ assurance that any of this ~~goes~~ - weapons will go to Iranian Army.
Met with John Poindexter + Bud McFarlane - ~~saying~~ re their change of offices
Met with President, Shultz, Don Regan, John McMahon, McFarlane, John Poindexter - in Upstairs residence of WH (end of corridor sitting room) [in margin:] 10-1155a - re NSC Iran proposal - President wants to free hostages. Thinks Hawks + TOWs would only go to "moderate elements in Army" + would help overthrow Iranian gov't. I argued strongly that we have an embargo that makes arms sales to Iran illegal + President couldn't violate it - + that "washing" transaction thru Israel wouldn't make it legal. Shultz, Don Regan agreed. President sd. he could answer charges of illegality but he couldn't answer charge that "big strong President Reagan passed up a chance to free hostages". ~~Preside~~ President left to do his noon radio. [*/]

*/ During his June 17, 1987 deposition before staff members of the Select Committees, Weinberger gave the following testimony that is flatly inconsistent with his contemporaneous diary note:

> Q: Do you recall the President saying in response to your legal arguments that the people would never understand it if he failed to release American hostages simply because he was worried about breaking the law?
>
> A: No, not that.

...

(continued...)

Saw Don Regan + Shultz - Don will try to
talk President out of it
...

[2/] (...continued)

Q: Do you remember him saying something to the effect that he was willing to take that risk and in an undoubtedly jocular vein visiting days are Wednesdays, or visiting days are Thursdays?

A: No.

Q: And let me complete it. Do you recall saying to him, yes, Mr. President, but the problem is you won't be alone?

A: No. No. There wasn't anything of that kind. I made the point that it was - at some point, then or in the January meeting, maybe both, that it was illegal among other things, but I also talked on the policy aspects of it. I talked on the effect it would have on our friends. I talked on the idea that it wouldn't accomplish what we to do in any event because of the kinds of people in Iran.

The only thing that strikes at all a home chord was that the President at some time, some meeting, said the American people or no one could forgive me if I didn't do everything possible to get Americans who are held anywhere released, but it was not in the connection of violating the law or anything like that.

The phrase I would - the American people would never understand if I didn't do everything possible, something along that line, to release, or to get Americans who are held anywhere in the world freed.

It was more in that general vein. I don't recall anything about the President ever saying anything about violating the law. But there were an awful lot of other meetings.

Maybe someone else heard that. I didn't hear that.

6/17/87 Dep. Tr. at 35-37.

In office 1210-1220
Met with Colin Powell + Rich Armitage -
debrief on meeting - no tasks -

Later that day, after he had flown to Alabama, Weinberger made two additional calls regarding the Iran initiative, which he also noted in his diary:

Called McFarlane in Washington - he is going to London to advise President's decision that we will not ransom our hostages - he will discuss with UK Possibility of their selling some arms to negotiators.
Called Colin Powell in Washington - re above[9]

On December 10, 1985, after McFarlane had returned from his meeting in London with Iranian negotiators including Manucher Ghorbanifar, Weinberger attended another White House meeting on the Iran initiative. Weinberger took two pages of

[9] In contrast to his contemporaneous diary notes, Weinberger gave the following testimony on December 17, 1986 to the Senate Select Committee on Intelligence:

Q: Do you recall a decision taken at that meeting [December 7, 1985 meeting with President Reagan and others] to - that Bud McFarlane would go the following day or the same day to London to meet with emissaries from the Iranians and discuss this matter?

A: Oh, no, no; nothing was said about that at all. We picked up some of that later from these [*intelligence documents*], but not -

Q: That was not discussed at that meeting?

A: Absolutely no; no. I would have protested even more loudly.

12/17/86 SSCI Tr. at 25.

notes during the meeting,[1] including McFarlane's detailed report on his London meeting and the following information:

Bud Ghorbanifar
We want to get better
relations with people who
want to get moderate govt in Iran
No on arms - but let hostages go -
we wanted to get hostages -

Hostages now a prob. to Iran - Being
sought by Syrians, Hizballah
He sd it be dangerous fr hostages
Bud " we wanted hostages back but
not on an imprudent basis

Bud
Sales of arms only in connection with
establishment of better gov't -
Hostages only ~~infren~~ indirectly linked

Separate hostage issue -
We tried that + they rejected it
We may lose a hostage this weekend

Several in gov't want to change it - but
to get in Moderate Elements -
by peaceful means.

Line 1 - Moderate
" 2 - Extremist - fundamentalists

Gorbanifar is corrupt, duplicative -
not to be trusted
\
Bud recomends [sic] we not
deal with Gorbanifar further
Karubbi - better - OK to talk
to him -- (in Line 1)
talk to them aside fm hostages

[1] Weinberger took these notes in pencil on the backs of the first two pages of the Department of Defense's December 10, 1985 morning compilation of press clippings, which he had carried from his office to the White House. Later, Weinberger added "Oval Office - 1030 Am" and the year "/85" in black ink and retained these meeting notes in his personal office at the Pentagon.

They might release hostages - (PM-) but
PM is very hostile + anti US
+ He would take more hostages

Bud recommends against going ahead
~~eelm~~ with original plan

...

Options
I accept original plan
might lead to disclosure +
more hostages
II - US Raid to release hostages
2 possible places in
Beirut
- some casualties inevitable
III - Continue to stand away
fm it - Israeli's will
go on delivering weapons
+ they might get hostages back
IV - Do nothing
(V - US deal with Iranians +
give up Israeli cover)

covert operation to get
arms to overthrow elements

Don R -
wants another meeting with
Bud + Gorbanifar -
+ to talk to PM.

...

Bud
[*Proposed message for Syria*]

We still must replace
500 TOWS to Israel

...

President - worried about
hostages - let
Israelis go ahead with
arms sales - we'll
get hostages back -

Poindexter New factor is
untrustworthiness
of Iranians

Coincidence of our hostages coming back
would be hard to deny it was all a deal
Send Walters to Damascus [*with message*]
Try to get in touch with Karubbi -

Weinberger made an additional note of this meeting in his daily diary:

Met with President, John Poindexter, McFarlane, Bill Casey - in Oval Office - McFarlane recommends that we not continue to deal with Iranian fr hostage release - but try to get more reliable Iranians who will help overthrow government - but not link any of it to hostage release. President still wants to try to get hostage released - But forcible Storming would mean many deaths - decided to send Dick Walters to Damascus [*with message*].

...

In office 1225 Pm - 645 Pm
Saw Colin Powell - full briefing on all WH Meetings[y]

In January 1986, Weinberger's notes record the continuing evolution of the Iran initiative. On January 6,

[y] In contrast to his contemporaneous meeting and diary notes, Weinberger gave the following testimony on December 17, 1986 to the Senate Select Committee on Intelligence:

> Q: There is - Mr. McFarlane has indicated that a couple of days thereafter [after the December 7, 1985 White House meeting] he returned and there was a debriefing session. Do you recall being involved in the debriefing session?
>
> A: No.
>
> Q: Now, did you have any discussion with the President between December 7th and January - or December 6th and January 7th on this particular subject.
>
> A: Not that I recall; no.

12/17/86 SSCI Tr. at 25.

1986, Admiral John M. Poindexter, who had succeeded McFarlane as National Security Adviser, briefed Weinberger in his Pentagon office on the latest proposal. Weinberger took detailed notes during this meeting with Poindexter, including the following:

1/6/86
John Poindexter
...
Hostages - Iran-Israel -
Peres wanted earlier,
rejected deal -
NIR, Israeli, came to see
John P.
Israeli - Nir - wants better
cover plan -
Gen'l Lahad ~~says~~ has 20
prisoners are Hizballahs - Pope
would urge 20 Hizballah go
because they are OK
We get our hostages back
in return for getting 20 Hizballah back.

Nir proposed selling 4000 TOWs
(unimp. [unimproved]) - No launchers - +
Israelis would deliver 500 via Israeli
plane -- if all 5 US hostages released -
then Israelis want 4000 TOW replacements,
+ If they are ~~cauget~~ caught they would
want us to acknowledge that we knew of it
+ did not object.

They say they want to help us
+ they want to be free to
retaliate v. Terrorist acts by Syria
~~and~~
Iran

Israelis think they could help
get better attitude with ~~west~~ West
If ~~No host.~~ we don't get all hostages
after delivery of 500 - call it off

~~Prepo~~ Israelis suggested 4000 more TOWs
be prepositioned by US.

Weinberger also made a note of this meeting in his diary:

> John Poindexter in office. Another Israeli-Iranian scheme offering freedom to hostages in return for TOW missiles - Told him I opposed it.

The next day, Tuesday, January 7, 1986, Weinberger attended another White House meeting regarding the Iran initiative. At the meeting, Weinberger took one page of notes on White House stationery, as follows:

> 1/7/86
> Oval Office
> Israeli-Iran scheme to release our 5 hostages.
> Iran should be overthrown - but this won't do it
> These aren't the people who will overthrow Khomeni
> Shultz strongly opposed -
> Bill Casey: can justify it valued long term geopolitical benefit
> E.M. [Edwin Meese] Ok to let other countries do things for us - let Israel do it for us.

Weinberger also made a diary note of this meeting:

> Met with President, Shultz, Poindexter, Bill Casey, Ed Meese, in Oval Office - President decided to go with Israeli-Iranian offer to release our 5 hostages in return for sale of 4000 TOWs to Iran by Israel - George Shultz + I opposed - Bill Casey, Ed Meese + VP favored - as did Poindexter.

On Monday, January 14, 1986, Weinberger's diary contains numerous entries regarding the Iran initiative:

Called office (2) - re messages - also re
Colin Powell's news on changes in
Israeli-Iran proposal for hostages

...

Met with John Poindexter - ... also re
changes in Iran hostage proposal [9/]

...

In office 2 - 4[05] pm

...

Colin Powell + Noel Cook [10/] [sic -
Koch] in office - re changes in Iran
offer on hostages -

...

Called John Poindexter - (2) - secure -
out; l.w. [left word]

...

In office 5 - 6[35] pm

...

Saw Colin Powell - re Poindexter

...

John Poindexter - rmc - Told him of my
misgivings with Iran Plan - he'll
hold to original Plan approved by
President

...

Saw Colin Powell - re Iranian changes in
their offer

9/ In preparation for this meeting with Poindexter, General Powell gave Weinberger a handwritten note:

14/1
Sec Def,
For discussion w/
Adm Poindexter:

...

f. Hostage Developments?

In the margins and on the back of Powell's note, Weinberger then made his own notes during his meeting with Poindexter, including cryptic comments that seem to refer to the Iran initiative: "Iran-Israeli changes Is ball in our ct." and "DSAA [Defense Security Assistance Agency] to sell depreciated." Weinberger preserved this page in his collection of handwritten meeting notes.

10/ Noel C. Koch, Principal Deputy Assistant Secretary of Defense for International Security Affairs.

On January 15, Weinberger also made diary entries on this topic:

> Saw Colin Powell (2) - re signing Martin Luther King Stm't. + re further twists in Israeli-Iran hostage release scheme
> Called John Poindexter - ... wants meeting tomorrow on Iran-Israeli plan

The next day, January 16, Weinberger's diary indicates he did attend a meeting with Poindexter and other senior government officials on this plan:

> Met with John Poindexter, McLaughlin - re ways to increase aid + financing for Lebanon - Bill Casey - Ed Meese - Stanley Sorkin [sic - Sporkin]

On January 17, 1986 -- the day President Reagan signed the final covert action Finding authorizing arms sales to Iran without notification to Congress -- Weinberger's diary reflects his legal objections to the Iran arms sales, and the decision to go forward notwithstanding legal prohibitions on arms sales to Iran:

> In office 905 Am - noon
> ...
> John Poindexter - re our Lebanon hostages - wants to know if we can sell to CIA
> ...
> Saw Colin Powell - re acts prohibiting sales to Iran
> Colin Powell (2) to Car - citation to statute above
> Lunch with Shultz, Bill Casey, John Poindexter in W.H. [White House] Family Dining Room, re attempts to get hostages back from Hizballah - Told him of Statutes forbidding sales to Iran.
> ...

In office 2 Pm - 645 Pm
Saw Colin Powell - re hostage negotiations

...

Called Ed Meese - out; l.w. [left word]

...

Called Poindexter - re hostages - read him statute - they are going on with it
Noel Koch - in office - he says CIA also planning a rescue mission - told him I should have known of this much earlier[11/]

[11/] In his initial testimony to the Senate Select Committee on Intelligence on December 17, 1986 and thereafter, Weinberger has testified that he had no contemporaneous knowledge of President Reagan's January 17, 1986 Finding, as follows:

> Q: Mr. Secretary, would you describe your participation in the drafting of the Finding that was eventually adopted on January 17th?
>
> A: Zero. I didn't know there was one.

12/17/86 SSCI Tr. at 29.

> Q: Tell me, Mr. Secretary, this Finding - let's go back to the particular Finding involved with the transfer of arms to Iran. Now, you said that you were not shown that Finding.
>
> A: That's right; until much later.
>
> ...
>
> Q: So this was a - this was extraordinary in the sense that you were not notified of it.
>
> A: It was extraordinary to me to find out 10 or 12 months later that there had been a Finding made that I had not seen, yes.

Id. at 42, 44.

In fact, Judge Stanley Sporkin, then General Counsel of the CIA, would have testified at trial that, prior to the signing of the Finding, he attended a meeting with Weinberger in Poindexter's office on January 16, 1986, at which a draft of the Finding was discussed. According to Judge Sporkin,

(continued...)

Weinberger's diary notes for the remainder of January 1986 contain additional entries on the implementation of President Reagan's decision to send U.S. arms and other assistance to Iran. On Sunday, January 18, Weinberger made these diary entries:

> John Poindexter - to know who CIA (Clair George) should deal with on hostage issue. Told him Noel Cook [sic - Koch]
> Called Colin Powell - re above

On January 20, 1986, Weinberger's diary shows his continued attention to this situation:

> Colin Powell - no requests yet for TOWs to free hostages

On January 21, Weinberger made these diary entries:

> Called
> "
> " John Poindexter - re weekend meetings on Iran hostage release.
> Saw Colin Powell - re above

On January 24, Weinberger's diary records his effort to limit Department of Defense involvement:

11/ (...continued)
Weinberger wanted his own legal team to review the document and, as a result, the Department of Defense did review the draft Finding and approve it. See 6/24/87 Joint Hearings on Iran/Contra Investigations, Testimony of Judge Stanley A. Sporkin, at 126-28. Judge Sporkin's account is corroborated by Weinberger's January 16, 1986 diary notes of the meeting, and his January 17, 1986 diary notes regarding his concerns about the applicable act and statutes.

> Noel Koch - in office - with Colin Powell - re Iranian-Hizbollah hostage release - we are not to be involved in this beyond selling to CIA

On January 28, Weinberger made another diary entry on this topic after noting his earlier meetings at the White House with President Reagan and other senior officials:

> Colin Powell to know if anything was said about our sale of TOW missiles to CIA - no -

On January 29, Weinberger made a number of diary entries regarding the provision of United States intelligence information to Iran as part of this initiative:

> Noel Koch in office - says CIA is now giving Intell. re Iraq positions to Iran as part of attempts to get our ~~prisoner~~ hostages out
> Called Bill Casey - he confirms that Clair George of CIA was ordered by Poindexter to give Iran intel. about Iraq dispositions
> ...
> Met with John Poindexter - to protest giving intelligence on Iraq troop dispositions to Iran as part of price for release of our hostages

E. The Iran Initiative After January 1986

Throughout 1986, Weinberger's diary and meeting notes contain sporadic entries regarding aspects of the ongoing arms-for-hostages initiative. On February 11, 1986, for example, Weinberger made a diary entry regarding his lunch at the White House with Poindexter, Shultz and Casey:

Attended Family lunch in Family Dining
Room of WH - re Nicaragua campaign
to block aid to Contras in Cong.;
Philippine election - Iranian
hostage rescue, etc

During that lunch, Weinberger took separate notes that include the following timetable for arms shipments, hostage releases and related events:

Casey - [*European country*] dropped some
demands

Sat - Feb 15 - 1000 TOWs fm Kelly
[Air Force Base] to Israel
Sun 16 500 - TOWs to Bandar Abas
Tues Feb 18 - US, Peres agents -
meet in Paris with Iran to
pass on Map sheets -
agrees on debrief on
Wed - [*Non-Iranian intermediary*]
meets w Lahad
2nd 500 fm Israel to
Sat - Lahad releases 25
Sun 23 - US hostages rele
Mar 21 - Khomeni resigns
We were told of attack on Bashrah -
that led to postponement of
Khomeni resignation

On February 21, Weinberger's diary reflects a threatened public disclosure, and another high-level meeting regarding the Iran initiative:

Saw Colin Powell - re reports that Jack
Anderson has some on Iranian Hostage
rescue
Attended Family lunch [with Poindexter,
Shultz and Casey] - in John
Poindexter's office in WH - re
Iranian hostage rescue; ...
...
In office 2 Pm - 725 Pm
Saw Colin Powell - debrief on Family
Lunch - ...

On February 24, Weinberger's diary shows his review of intelligence reports on the Iran initiative and continuing communications with Poindexter:

> Saw Colin Powell - re new [*intelligence reporting*] on Iranian hostages show too much being offered by NSC operatives -
> Called John Poindexter - re above - he'll look into it
> ...
> John Poindexter - NSC people (Oliver North) - has not exceeded instructions with Iranian negotiators - Their [*discussions are*] just to give Iranian more credibility - also we are getting a lot of Intelligence out of the exchange.

On March 4, Weinberger recorded another Iran initiative discussion with Poindexter:

> Attended lunch with John Poindexter - in his WH office - re Iran hostages. (about delays and demands - McFarlane will go as rep. to meeting if they agree); ...

On March 7, Weinberger's diary continues on this topic:

> Saw Colin Powell (2) - re above -+ re NSC tasking for sting + other Iranian hostage rescue attempts.

On April 10, 1986, Weinberger (who was travelling in Australia) made a diary entry regarding the latest phase of the Iran initiative:

> Saw Don Jones[12/] - re cables fm Will Taft - on addl attempts to buy our kidnappees' release - with sp Hawk equipment -

12/ VADM Donald S. Jones, Senior Military Assistant to the Secretary of Defense.

On April 13, Weinberger made additional diary entries on this topic shortly after his return to Washington:

> Saw Don Jones - re Libya attack plans + Iran hostages
> " Will Taft - re ~~ab~~ same - also re ~~sam~~ Iran hostages - McFarlane, North going to Iran - idiocy -
> ...
> Called John Poindexter - Also told him I opposed Iran hostage purchase -

On April 18, Weinberger wrote:

> Saw John Poindexter - to urge that we stop hostage rescue attempts fm Iranians
> ...
> Don Jones in office - ~~another~~ A US hostage [Peter Kilburn] killed in Lebanon -

In May 1986, during the period leading up to the trip to Iran by a U.S. delegation headed by McFarlane and accompanying a planeload of weapon parts, Weinberger made additional diary entries concerning the Iran arms sales. On May 13, for example, Weinberger's diary entries show he was receiving and discussing Iran initiative intelligence reports:

> Saw Don Jones - re [*Iran initiative*] cables
> Called Shultz - secure - out; l.w [left word]
> ...
> Shultz - rmc [returned my call] - told him of latest [*Iran initiative*] cable - he'll read it at 2 pm meeting.
> ...
> Met with ~~Pres~~ Shultz - in Cabinet Room - Showed him [*Iran initiative*] cable - he is appalled.

Met with President in ~~Oval~~ Cabinet Room -
with 6 GOP Senators, Bill Casey, +
John Poindexter - to urge them to
vote ~~for~~ to sustain President's veto
of resolution of Disapproval of
Saudi missile sales
Saw John Poindexter - urged again that we
should drop Iranian hostage ~~rescu~~
purchase - told him cable [*reported*]
they had not agreed to release ~~ho~~
our people

On May 23, 1986, Weinberger, who was spending time in Maine on his return from a trip to Europe, made this diary entry:

John Poindexter fm Washington (2) - rmc
[returned my call] - re Vienna +
NATO trip - President's decision on
SALT II; I have regular appointments
with President now; Iranian hostage
rescue effort on again

The next day -- as McFarlane, North and others were in transit to Iran -- Weinberger noted:

Rich Armitage fm Washington - re ...
Iranian hostage - North + [*non-
Iranian intermediary*] at it again -
....

Four days later, as the negotiations in Iran were collapsing, Weinberger made another diary entry:

Met with President Azcona of Honduras -
at Madison [Hotel]
Rode back [to the Pentagon] with Rich
Armitage - Iranian hostage release
off again

The next day, May 29, 1986, Weinberger's diary indicates that he received a prompt report from Poindexter on McFarlane's mission to Iran:

Saw John Poindexter - ... also re
McFarlane's failure with Iranians -
They cannot release hostages - held
by Shias - sd that it was because
"highest levels" hadn't heard about
it "in time"

On June 9, 1986, Weinberger's diary notes include additional information on the Iran arms sales:

Saw Don Jones - re further NSC attempts
to revive contacts with Iran +
hostages
Called John Poindexter - out; l.w [left
word]

Weinberger's diary indicates that he spoke with Poindexter the following day, June 10:

Called John Poindexter - secure - out;
l.w. [left word]
...
John Poindexter - rmc [returned my call]
says no further meetings on
attempts to get Iranian
hostages - But wants to revise
plans for "recovery + work on
Casey's task force -
...
Met with Will Taft + Don Jones - re John
Poindexter's request for our special
forces to plan other means of
rescuing hostages

On July 2, 1986, Weinberger made this diary entry:

Rich Armitage - in office - more rumors
that North is trying to buy freedom
of some of our Hostages in Iran -
....

The next day, Weinberger's diary states that he pursued this topic at the White House:

Met with President, John Poindexter,
Shultz, etc - in Oval Office -

> Saw John Poindexter - with Shultz - Re latest manouverings on Iranian rescue attempts - we still are telling them: all hostage return - first before anything else

On July 16, 1986, Weinberger's diary indicates that he discussed the same matter with the same senior officials:

> Met with Shultz + John Poindexter - no further offers in our attempts to get hostages back unless + until they release all hostages

On July 21, 1986, Weinberger made a diary note about Armitage's suggestion that they meet with Michael Ledeen to discuss the history of the Iran initiative:

> Rich Armitage in office - ... wants to have LeDene [sic] brief me on start of Iranian problems

Three days later, Weinberger made a diary note of his early morning meeting with Armitage and Ledeen:

> Rich Armitage + Michael Ledeen in office.

On July 26, 1986, Weinberger made diary notes regarding the release of Father Lawrence Martin Jenco, a U.S. citizen who had been held hostage in Lebanon:

> Don Jones - 1 US hostage released
>
> ...
>
> Rich Armitage - 1 US hostage freed - Ollie North going over tonight - authorized plane, etc to pick up 1 hostage

On July 30, 1986, Weinberger made a diary note regarding the provenance of Father Jenco's release:

> Met with Rich Armitage + Don Jones - re release of Fr. Jenko [sic] - apparently due to Iranians who want more US weapons

On October 3, 1986 (the day before Weinberger left Washington on a 19-day trip to Alaska, Japan, China, India, Pakistan, Egypt, Italy, West Germany and Scotland[13]), his diary entries show that he received a status report on the Iran initiative from Poindexter, and that he passed the information on to Deputy Secretary of Defense Taft:

> Met with John Poindexter - in his office - ...; also re negotiations to get ~~ref~~ hostages out of Iran (Haig + Kennedy trying to get in on the act)
> ...
> Saw Will Taft - re ...; also John Poindexter's report to me on ~~re~~ use of Rafsanjani's nephew to get Iran hostages;

In late October 1986, Weinberger's notes reflect preparations for the final hostage release. On October 30, Weinberger wrote the following diary entries:

> Rich Armitage - secure - Ollie North wants a helicopter to "pick up 2 hostages" -
> Saw Don Jones + Rich Higgins[14] - re late cables [*regarding the Iran initiative*]
> ...

[13] During this trip, on October 7, 1986, Weinberger made his only entry regarding the shootdown of the plane in Nicaragua carrying a United States citizen, Eugene Hasenfus:

> Called home
> " Rich Higgins in Washington - re CR [Continuing Resolution] progress; Nicaragua claiming they shot down Contra plane -

[14] LTC William R. Higgins, Military Assistant to the Secretary of Defense.

John Poindexter fm Washington - on
Secure - re possible release of 2 of
our hostages - he does need our
helicopter to go to Beirut tonight
Called Rich Armitage - re above

...

Saw Don Jones - re Cables on possible
release of our hostages.

On October 31, Weinberger's diary indicates that he continued to discuss the impending hostage release with Poindexter, who was in Idaho with President Reagan:

Called John Poindexter - in Twin Falls re
my comments on NSDD - also re
hostage release

On November 1, Weinberger's wrote:

Called Cables - Rich Armitage called
" Rich Armitage - n/a [not
available]

...

" Rich Armitage - hostages may come
out tonight

On November 2, Weinberger noted the release of hostage David P. Jacobsen:

Rich Armitage - 1 US hostage freed + is
now in Embassy

...

Don Jones }
Rich Armitage } - 1 US hostage freed - no
word on any others.

...

Rich Armitage - Weather prevented our
helocopters [sic] getting Jacobson
[sic] out of Beirut -

F. November 1986: Revelation of the Iran Initiative

On November 5, 1986, Weinberger made his first diary entry regarding the public revelation of the Iran initiative:

> Called John Poindexter - Shultz has suggested "telling all" on attempts to deal with Iran to get their help - strongly objected[.] I sd we should simply say nothing - John agrees.

The next day, Weinberger made additional diary notes on this topic:

> Saw Don Jones - re continued stories about our negotiations with Iran

On November 7, Weinberger made this diary note:

> Called John Poindexter in Washington re Speakes[']s comments that Shultz + I knew all about Iran hostages

The next week, Weinberger made extensive diary notes regarding the Iran initiative. On Sunday, November 9, 1986, Weinberger wrote:

> " [Called] John Poindexter - he hasn't heard fm Shultz - Thinks there won't be hearings until after January - says Jacobson [sic] is very strong but Weir + Jenco weren't

On November 10, Weinberger wrote:

> Saw Don Jones re Iran hostage stories - he'll get Rich Armitage in to go over chronology of arguments I made to President against it
>
> ...
>
> Rich Armitage in office - re Iran - reminder of chronology of discussions by NSC, etc.
>
> ...

Met with President in Oval Office[.] Shultz, V.P., Don Regan, John Poindexter, Bill Casey, Al Kheel [sic - Keel] (see separate memo)
Called office Told them I couldn't get back to do Marine ceremony @ Pentagon
Lunch with Shultz in WH mess. he is very unhappy about Iran + proposed [public] statement
...
Bill Clark in office - very unhappy about Iran + McFarlane's role in it -
...
John Poindexter - read much shorter statement on Iran matters for President to use.
...
Saw Bill Crowe ~~Bill Crowe~~ - re Lee Hamilton + Nunn + Aspin desire for hgs [hearings] - on Iran, + on ~~JCS~~ consultation with JCS prior to Iceland -

Weinberger also made extensive handwritten notes during the White House meeting, including the following:

John Poindexter - we wanted better relationship

Jan 17, '86 - Pres. finding
501 Natl Sec Act + Directs ~~CA~~ DCI not to tel cong. - until further
...
We used Israelis initially - - They were sending arms to Iran to get Iranian Jews out of Iran also they wanted Iran Iraq war going as long as possible
...
500 TOWs - Defensive weapons first before telling us
1000 Sold by Israel \/ to Iran - Iran pd. Israel - Israel pd us

500 TOWs sent last week -- arranged ~~bee~~ as a result of meeting with Rafsanjani nephew - CIA + NSC on Oct 20-25-
No ~~Hawk to Iranian~~
HAWK - missiles

Rasfanjani nephew came here - to show him
this was legitimate op.
Second meetings in Europe

I was always told no more after 1st 500,
until after all hostages ~~rep~~ returned.
But we did send another 500 as "only way
to get hostages out"

...

Bill Casey - how to present it publicly -

Proposed stm't. we tried to protect our
abilities + contacts to get better
contact with Iran
Because Iran has gone public - we have to
describe what we have done to get better
relations with Iran
We've tried to End Iran Iraq war - to
prohibit shipments that would affect
result

We have ~~tried~~ not given in on ~~hosts~~ not
paying for hostages - we do need to
encourage people who can help + we need
to pursue dialogue with Iran -
President made decision bearing in mind
risks -

...

CWW [Weinberger] - We'll also need to
answer questions or have Cong. hgs

RR [President Reagan] - we need to point
out in that stm't that discussion
Endangers sources + our plans.

...

Shultz - ~~1.)~~ It is responsibility of
Gov't to look after its citizens but once
you do deal for hostages - you expose
everyone to future capture
2) - We don't know but have to assume the
captors did get something
3) Don't emphasize that we only sent
small numbers of Weapons - Israelis
sucked us up into this so we couldn't
object to their sales to Iran
Danilof [sic - Daniloff] came out OK - because
told story

CWW There will be a lot of noise after
this stm't.

RR - We shouldn't take any questions
after it

Don Regan - we are being hung out to dry
our credibility is at stake - we'll have
to say enough

...

RR [-] we must make it plain we are not
doing business with terrorists
we aren't paying them
we are trying to get ~~a~~ better relations
with Iran + we can't add to this w/o
endangering people ~~in Ira~~ we are dealing
with
We are within the law - + our rights.

CW/We have to bear in mind that we can be
blackmailed by Iranians + Israelis

Cong. could hold hgs. before Jan.

The next day, November 11, Weinberger made this diary entry:

Called John Poindexter re continued
claims by Shultz that he has
demanded no more sales to Iran

On Tuesday, November 12, 1986, the date of another White House meeting, Weinberger wrote:

Saw John Poindexter - ... also re
guidance on my press meetings today
- he'll get WH stmts [statements] to
me

...

Shultz - he is telling press he has no
comments on Iran + is using WH stmt.

...

Attended WH Sit Rm meeting - with
President, VP, Shultz, Ed Meese,
Poindexter - Sen Byrd, Jim Wright,
Bob Dole, Dick Cheyney [sic -
Cheney] - (see separate memo)

The "separate memo" that Weinberger mentioned in his diary apparently is the sixteen pages of handwritten notes he took during the meeting, including the following:

RR - anything we say must not go beyond
this room
Imp't. to Know what hasn't been done
Can't go public for a while
Not Negot. with terrorists
no Bargaining with Terrorists
all agencies + advisors involved

Covert Intell. op.
No rogue op. being run out of WH basement
Main goal is to improve our Strategic Posit.
in Mid East

...

Poindexter - will give detail but not names.
Importance of Iran oil, USSR ok
Also wanted to get hostages released.

Pres. finding - Jan. 17, 86.
Read
get better govt in Iran
" " Intel fm them
Further release of US hostages

...

We have 3 hostages back
Our small arms transfers were designed to
let them know we were in good faith - to
allay suspicions

...

Earlier we found Israeli's were sending
arms to Iran

Objectives - They were selling
1) Arms to Iran to get Iranian Jews out
of Iran
2) - They want war to go on

Carter tried to open contacts with Iran -
but talked about it + contact lost + big
fight broke out

...

Dole - But aren't you trading arms for
hostages

RR - - No - we'd try to open contacts
with or w/o the hostages

...

Byrd - to Shultz - you were oppose -
Shultz - I attended 2 meetings - never
discuss my advice to President

To[l]d Byrd - I attended same 2 meetings - similarly unhelpful in discussing my advice to Pres.

...

Byrd - weren't contacts initiated before Jan. - '86 (finding) -

Yes

...

CWW ask special plea that nothing be sd about continuing plans to free remaining hostages by force

Byrd - Didn't hear you say that!

During this meeting, Attorney General Meese apparently slipped the following handwritten note to Weinberger, who preserved it with his meeting notes:

Conclusions reached as a result of today's meeting:
IT'S GOING TO BE A LONG TWO YEARS!

On November 13, 1986, the date of President Reagan's evening address to the nation regarding the Iran arms sales, Weinberger made these diary notes:

Bill Casey, Bob Gates, Will [Taft] in office ... - + re President's talk tonight

...

Called Shultz - out
Fred Hoffman[12/] in office - re President's draft talk - + plan to promote it

...

Saw Shultz - he isn't happy yet with President's draft talk

...

Called John Poindexter (2) - out talked to Al Kheel [sic - Keel] - re changes in President's talk

...

12/ Fred S. Hoffman, Principal Deputy Assistant Secretary of Defense for Public Affairs.

Saw Don Jones - re revised draft of
President's talk
Called Al Kheel [sic - Keel] - re same
...
~~Cables~~ — Rich Higgins - has copy of
President's speech

On November 14, Weinberger wrote:

Bill Clark - ... also he is picking up
~~Bill~~ Chas Price [U.S. Ambassador to
Great Britain] at airport - says ~~ex~~
Iranian reps. of State - very
unhappy with us.

On Sunday, November 16, 1986, after Secretary Shultz had admitted on CBS-TV's "Face the Nation" that he did not have authority to speak for the entire Reagan Administration when he stated that there would be no more arms shipments to Iran, Weinberger made the following diary entries:

Called John Poindexter - out; l.w. [left
word]
...
John Poindexter rmc [returned my call] -
re Shultz "distancing himself" ...

On November 18, after The Washington Post had reported that Weinberger had called an early NSC document regarding Iran "absurd," he made these diary notes:

Bob Sims[19] - re briefing of press on
story about my objections to Iran
relationship - + re my speech of
last night
...
Bill Crowe in office - re Mid East Strong
protests v. our actions in Iran;
....
...
Will Taft in office - ... Rich Armitage +

19 Robert B. Sims, Assistant Secretary of Defense for Public Affairs.

Bill Casey will go to Nov 21 hg.
before Lee Hamilton -

...

Saw Rich Armitage - re his testimony
Friday [November 21, 1986] - +
Ghazala meetings - Told h[im] I did
not remember any spare parts having
been sent - Also he wanted to know
if I'd seen Pres. finding before -
Told hm no

On November 19, Weinberger made these diary entries regarding the growing Iran controversy:

Saw Shultz - he is urging Budget increase
on President for Defense + Foreign
Aid - wants entitlements cut - sd
nothing about resigning

...

Watched President's Press Conference
Called President - to congratulate him on
his Press Conference.

On November 20, Weinberger wrote:

Rich Armitage in office - re his
testimony on Iran tomorrow to
Intelligence Committees -

...

Px Kelley - acting CJCS in office re TOWs
Trfd [transferred] to Iran

...

Bill Casey - re his testimony tomorrow

...

Saw John Poindexter - re Iran + -
McFarlane's, etc

On Friday, November 21, 1986, Weinberger wrote:

Bill Clark ... also wants me to be
Secretary of State + if so he'd come
back as N.S.C. adviser to President

...

Met with President - in Oval Office -
with John Poindexter ... also re
Iran - I urged that we all stop
talking about it

...

[Called] Rich Armitage - re his testimony
with Bill Casey + meeting tomorrow.

...

Ed Meese - President has asked him to put
together paper covering whole Iran
Epsidoe [sic - episode]

On Saturday, November 22, Weinberger made these additional diary entries regarding Iran and related matters:

Called Colin Powell in Frankfurt - rhc
[returned his call] - ... also re
Iranian shipments
Met with Rich Armitage + Bill Crowe - re
Bill Casey's testimony Θ at
Intelligence Committees - Possible
illegal Israeli shipment via CIA
carrier last Nov. (before any
finding) to Iran -
...
Don Jones - to car - Post may run story
about Californians trying to
recommend ~~more~~ changes in
President's appointees
Called Fred Hoffman - rhc [returned his
call] - Molly Moore of Post Called
him about rumor Bill Clark, Ed Meese
+ I were recommending change in adm
- Told him nothing to it at all

On Sunday, November 23, 1986, Weinberger made this diary notes of his meeting with Saudi Ambassador to the United States, Prince Bandar:

Cables - Prince Bandar trying to reach me
Called " " - ... + he would
like to see me in office
...
Prince Bandar in office - Nancy Reagan in
a 1 1/2 hr. talk Friday with him he
invited President to dinner at his
embassy sd she thinks Shultz should
go - that he has been disloyal to
the President - he sd he recommended
to her that I be named Secretary of
State; that I could negotiate an
agreement with Soviets because no
one could say I was soft on them -
she feels that very few are being
loyal to President + that Shultz
should not have gone to Canada
Friday + should support President -

she would like Baker to go in as Secretary of Defense!
[in margin:] King Fahd has sd. that there will be no public criticism of President, but they are very unhappy about arms sales to Iran.

...

Called Don Jones - ... Also told hm that Bandar had reported that Saudis will not publicly criticize President on Iran.

On Monday, November 24, 1986, Weinberger made a number of diary entries related to the Iran initiative:

Saw Rich Armitage - re cost of TOWs - + whether Saudis are sending any to Iran

...

Called Bill Clark in San Luis Obisbo [sic - Obispo] - re rumours on Howard Baker, James Baker et al - Also re Prince Bandar's comments on Nancy Reagan + Shultz

...

Called John Poindexter - re today's meetings of NSPG [National Security Planning Group] - Bill Casey will report on Teheran's channels

...

Attended NSPG - WH Sit. Rm. - President, V.P., CWW, Bill Casey, Poindexter, Shultz, Ed Meese - re Iranian situation - President says he'll not apologize because doesn't think he's done anything wrong. I urged that we get better channels into Iran[.] President wants no further talk on Iran -

Saw Vice President + Bill Casey - re meeting -

In office 425 pm - 650 pm

Admiral Crowe in office re NSC meeting -- told hm of President's desire that we all stop talking about Iran ~~Excet~~ (except for Cong. hg.)

...

Will Taft - back home - will discuss NSC + Iran tomorrow

Weinberger also made extensive handwritten notes during the White House meeting that afternoon, including the following:

> Don Regan
> ~~In~~ Did we object to Israeli sending Hawks ~~—whe~~ shipment missiles - to Iran ?
>
> Poindexter -
> From July 85 to Dec 7
>
> McFarlane handled this all alone - no documentation -
>
> - he went to London - Dec. 7
>
> EM [Edwin Meese] - Israelis told Bud that if we could get big weapons supply to Iran we could get ~~the~~ all hostages out.
>
> Bud told Shultz that on Secure call to Geneva -
>
> Shultz - he didn't discuss it - he told me -
>
> EM: Plan ~~to~~ was to put Hawk missile into [*European country*] + then to Tehran with Hawk missiles -
> hostages had to be released
> 18 Hawks - sat at Tehran - returned later - because Iran did not want them.
>
> Not legal because no finding
> President not informed.
> ---

On Tuesday, November 25, 1986, the day that Meese publicly announced a diversion of funds from the Iranian arms sales to the Nicaraguan Contras, Weinberger's diary reflects the activities within the Reagan Administration:

Ed Meese - Adm. Poindexter is resigning - Ed's investigation found some things which he turned over to President - Col. North also leaving NSC + leaving Marine Corps

...

Called John Poindexter - to tell him I'm very sorry he is leaving + we would welcome him back into Navy -

...

Bill Casey - on secure - thinks Shultz should go to[o] - suggests Kampleman [sic - Kampelman], Scowcroft, Tower or Eagleburger should be NSC head. I suggested Bill Clark - Bill also mentioned Bob Gates + John McMahon

...

Attended meeting in Oval Office with President, Vice President, Don Regan, Shultz[,] Baker, Bill Casey, Kheel [sic - Keel], Ed Meese - Ed reported that Israel charged Iran more for TOWs than they cost + put the balance in Swiss Bank accts' for Contras - (see separate memo)

* [Attended] Meeting of President + Cong. leadership in Cabinet Room

Met with President in Oval Office - Shultz praises President + offers support on Iran. I argued that Shultz + State should not _____ [illegible].

~~Attende~~ President's brief Press Stm't. in WH Press Room -

Watched Ed Meese's Press briefing - with President, VP + Don Regan - in President's small hideaway office

....

...

Bob Sims in office - re press guidance.

...

Called Rich ~~Armacost~~ Armitage

Rich Armacost [sic - Armitage] in office - ... + re North - Rich ~~he did~~ did not know of Contras.

...

* [Called] Bill Clark in San Luis Obisbo [sic] - Bill Fr. [French] Smith + Pete Wilson both will call President + urge that he dump Shultz

Saw Ambrose[17/] in office - with cost figures on TOW's sent to CIA

...

Called Ed Meese - refs stories that Shultz has sd. President gave him all authority over Iran.

The next day, Weinberger wrote:

Sen. Dan Quayle in office - for lunch - unhappy with Shultz - also re Budget

On Thursday, November 27, 1986, Weinberger made a diary entry regarding proposed personnel changes in the Administration:

Thanksgiving Day

...

Bill Clark fm San Luis Obisbo [sic] - Bill Casey, Bill Smith, Hume, etc. all calling President + Nancy to urge changes at State - Told Bill my name should not be used - + that I wanted him (Bill) to come east as NSC, etc.

On November 28, Weinberger noted:

Saw Don Jones - re Ambrose stmt's that there are "discrepancies" in prices of TOW's charged to the CIA

Called Jim Ambrose - all were charged at $3400 each - some at least should have been $8400 each - he is checking to see if it was a mistake or what

Called Will Taft - re above -

Saw Don Jones - he never gave any instructions as to price nor did Colin Powell

Jack Marsh[18/] - ... says his own IG [Inspector General] will look at TOW sale records

...

Bob Sims - Says Barry of Newsweek has some story I agreed to replenish arms shipped by Israelis to Iran -

17/ James R. Ambrose, Undersecretary of the Army.

18/ John O. Marsh, Jr., Secretary of the Army.

Told him it was all nonsense + to knock it down
Called Will Taft re above - he never heard of it Either -
Called Don Jones (2) - re above - he never heard of it
...
Called Colin Powell in Frankfurt - he thinks someone once talked of replenishing Israeli stocks if they sent to Iran but never acted on.
...
Larry Garrett to car + home - Justice investigators want to talk to us Monday morning [December 1, 1986] - OK
Rich Higgins - ... Justice man [will come] at 745.

On November 29, Weinberger wrote:

Jack Marsh - Thinks weapons transfers like Army problems I had investigated in '81
Cables - They have letter fm Durenberger - Will deliver tomorrow

The next week, on Sunday, November 30, Weinberger made these diary entries:

Cables at home with papers + Durenberger letter
Called Colin Powell in Frankfurt - re transfers of arms + costs - all prices negotiated between Army + CIA.

Weinberger also wrote the following notes on a "Secretary of Defense" note pad:

Bill Clark
" Smith
Pete Wilson
} conf. call - before Contras

wanted change at State

Bill Smith called Nancy
Pete Wilson would call Pres.
Bill Clark left message with Cathy Jack Hume
} 40 minutes

Bill Casey + Holmes in Fla.
" " wrote Pres. there has to be a change
Ed Meese concurs in:
[in margin:] Bill Casey says fate of Western World depends on what we do in 72 hrs.

Bill Smith going to Santa Barbara
I shouldn't be part of it
...

* * *

Weinberger continued to make diary entries regarding Iran/Contra and the various investigations throughout December 1986 and 1987. On December 5, 1986, for example, he wrote the following diary entry:

Called Don Regan in Washington ... + re Speakes comments that WH disagreed with my statement that President got bad advice on Iran - they don't - President appreciates my support - President has asked him to stay on + he will

On December 18, 1986, Weinberger made another diary entry regarding other Administration personnel:

Bill Clark in office - says Shultz is losing all credibility - + that Nancy talked to Deaver + Bill Rogers + Strauss, + President - urging him to drop Don Regan

Financial Reports and Discussion

Aggregate Expenses

The enclosed Statement of Expenses, Exhibit 1, presents the costs of the Office of Independent Counsel Lawrence E. Walsh for the entire period the office will have been in existence. The amount shown, $37,683,806, is a total of reported expenses, as well as an estimate of expenses for the final six-month period, April through September 1993.[1]

Exhibit 2 displays these expenses and summarizes expenses for subsequent accounting periods. These periods conform to those covered by GAO's first two audits of independent counsel, subsequent audit periods, and the six-month periods covered by OIC-Walsh's submission of its semi-annual Report of Expenses and Estimate of Future Expenses, required by 28 U.S.C. § 593(b)(1).[2]

On October 9, 1992, the Comptroller General published the results of the General Accounting Office's first financial audit of all independent counsel.[3] For OIC-Walsh, the period audited was from the office's inception on December 19, 1986, through March 31, 1992, a period of five years and three months. While GAO was unable to verify the accuracy or completeness of Independent Counsel's expenditures, the audit report indicated a "general indication" of the level of expenditures for this period of $30,303,000.

In April 1993, GAO published its second Independent Counsel audit report covering the next six months (April through September 1992).[4] OIC-Walsh expenditures for this period totaled $2,785,000. The third audit is taking place at the time of this writing. Costs reported by OIC-Walsh for this six-month period (October 1992 through March 1993) were $2,610,000.[5]

Prior to GAO's initial audit, begun in August of 1992, there had been much public speculation as to how much money the office had actually spent to conduct the Iran/contra investigation and resulting prosecutions. While some estimates ran as high as $100 million, the $30,303,000 cited in the audit report was a more accurate level of actual OIC-Walsh costs for the period.

The October 1992 audit report also identified other costs related to Iran/contra which were not accounted for by this office or by AOUSC. To portray more completely the total costs of the investigation, those additional costs expended from the Independent Counsel Indefinite Appropriation are added in Exhibit 3, resulting in an adjusted total cost of $40.5 million. These additions are discussed in the footnotes to the Financial Statements.[6] Most of these additional costs were associated with providing for the security of classified material.

[1] The Office expects to close in early August, the exact date depending on the speed with which documents can be turned over to the National Archives, property inventories can be returned to the Department of Justice, and other administrative matters concluded. The September 30 date cited on the Statement is the date ending the Government's fiscal year 1993, and the last day of the final six-month period to be audited by GAO.

[2] Certain costs pertaining to employee severance will accrue after the office has closed and are listed in the final period, "10/1/93 to End."

[3] *Financial Audit: Expenditures by Nine Independent Counsels* (GAO/AFMD–93–1, October 9, 1992).

[4] *Financial Audit: Expenditures by Three Independent Counsels* (GAO/AFMD–93–60, April 21 1993.) GAO is required to audit all independent counsel expenditures every six months.

[5] Subsequent GAO audits will cover subsequent six-month periods, as required by 28 U.S.C. § 596 and Public Law 100–202.

[6] Other costs, provided to GAO by other agencies as Iran/contra-related costs, are also discussed in the Audit Reports. They are not included here, as they are unauditable estimates.

Security of Classified Material

The quantity of classified documents and other information involved in the Iran/contra investigations and litigation was in excess of three million pages. The management of this amount of classified material demanded enormous quantities of time and resources.[7]

The quantifiable costs directly associated with managing this classified material are depicted in Exhibit 4 in two groupings, "SCIF" and "Other Security Costs." Together, they total almost $9 million, approximately 22% of all OIC-Walsh expenses. The "Other Security Costs" are the direct costs, such as alarm systems, security guards and security personnel. They do not include the time required of all staff to handle, catalogue, dispose of, redact, and otherwise account for these classified documents.

The classified documents were used by all attorneys, paralegals and other staff members. They were the very basis of virtually all the OIC's work, demanding substantial, albeit unmeasured, quantities of time and energy in the process of investigation and litigation. It also does not include the lengthy delays experienced waiting for agencies to search for, find, reproduce and deliver classified material requested of them.[8] This security-related expense is so unique to OIC-Walsh that comparisons of its costs to the costs of either a typical law office, a U.S. attorney's office or another Office of Independent Counsel are difficult.

The Defense SCIF

Exhibit 4 further shows that the majority of quantifiable security of classified material costs are those associated with maintaining a special office, known as a Sensitive Compartmented Information Facility (SCIF), for the defendants and their attorneys. The defense SCIF was a specially prepared workspace located at 1025 Connecticut Avenue in downtown Washington. It was created in compliance with a classified-information protective order to provide the Iran/contra defendants and their counsel access to classified information in preparation for trial. Technically, a SCIF is any facility used for the storage, handling and control of highly classified (SCI) material. A SCIF must be designated and certified, or accredited, by Government security authorities. OIC-Walsh's office in downtown Washington was also an accredited SCIF.

The Iran/contra defendants were provided suites at the defense SCIF for various periods of time. Costs to operate it, including the additions shown in Exhibit 4, were more than $6 million.

From the defense SCIF's establishment, it was treated as a unique cost center to distinguish its costs from other costs for the following reasons:

—The establishment and operation of the defense SCIF was a significant additional expense. Independent Counsel had no direct control over its costs; its establishment was mandated by the court. The Protective Order required that "the SCIF [be] accessible . . . twenty-four hours daily every day of the year." Since office lease charges normally include heating and air conditioning for a standard eight hours, and additional office hour usage requires payment of "overtime utilities," the access required by the court incurred an additional occupancy cost of $12,600 per month, or over $150,000 per year. Therefore, a separate and distinct accounting of all SCIF costs was considered appropriate.

—There was some disagreement as to whether OIC-Walsh or the Justice Department would pay for SCIF costs. An internal Justice Department Memorandum, Exhibit 6, provides the only documented discussion of the issue. The memorandum concluded that OIC-Walsh should pay for all defense SCIF costs except the salary and benefits of the court security officers.

—The need for a separate facility for a defense SCIF and the additional costs was

[7] The management of classified information is usually divided into five areas: (1) security of documents, (2) clearances for personnel to have access to the documents, (3) physical security of the office spaces housing the classified material, (4) communications (telephone, facsimile transmissions) security, and (5) the elimination or prevention of electronic and/or sound emissions in the electromagnetic spectrum.

[8] In just one of many "steps" involved in handling classified documents, that of Rule 16 Discovery, over one million documents were reproduced and provided to Lt. Col. Oliver L. North and his counsel. Equal numbers were provided to other defendants such as Vice Adm. John M. Poindexter. See *Second Interim Report to Congress by Independent Counsel for Iran/Contra Matters*, in this volume.

controversial. There existed at the time sufficient office space within the leased OIC-Walsh facility at 555 13th Street after completion of certain aspects of the investigation and trial work. This space was offered to the court for use as a defense SCIF, at significantly less cost than leasing and preparing a separate facility elsewhere. In addition, protective services and other mechanisms required for accreditation already existed at OIC-Walsh. Nevertheless, the court directed that a separate SCIF be established. It was opened in May 1988 and closed at the end of March 1993.

Executive Branch Requirements

GAO's October 1992 Audit Report also declared that independent counsel offices are agencies of the Executive branch, and that their officers and employees "are governed by the same statutory provisions and regulations . . . contained in Title 5 of the United States Code relating to pay, allowances, travel and transportation."

This position was concurrently taken by AOUSC. Shortly after OIC-Walsh was established, it was advised by AOUSC that, due to the temporary nature of their appointments, office employees were not eligible for retirement benefits and certain other benefits and programs available to permanent employees. Their salaries were based on this understanding. AOUSC counsel in August 1992 reversed this position, based on the position taken by GAO that OIC employees are Executive branch personnel. Consequently, OIC-Walsh employees began in December 1992 to enroll in government retirement programs, and simultaneously to apply for retroactive payments into their retirement-program accounts. Additionally, GAO has ruled that all OIC employees otherwise qualified are entitled to retroactive shift differential pay and severance pay if and when terminated.[9]

The total cost of these additional employee liabilities is estimated at $1.5 million. To the extent that the accrued costs can be reasonably estimated, they are included as accrued expenses in the final two accounting periods.

[9] Eventual involuntary termination, to occur when the work of the office was completed, was discussed with each employee at hiring and was an understood condition of employment.

History of Financial Activity

Recorded OIC-Walsh costs for each calendar year are depicted in Exhibit 5. The graph shows that 1988 and 1989 were the years of greatest costs, due primarily to the number of attorneys, both full-time and part-time, working on the investigation, and the indictment of North, Poindexter, Albert Hakim and Richard V. Secord. Severance of the case into four trials, ordered by the court in June 1988, served to stretch out the litigation process over the next two years, and staggered the office's trial calendar. Those attorneys, particularly the part-time attorneys assigned to the *Poindexter*, *Hakim* and *Secord* cases, reduced their office time until their respective court dates approached.

Exhibit 6 displays the average number of attorneys employed during each quarter, and further demonstrates the initial level of activity brought about by the need to gather evidence swiftly before Congress granted immunity to key witnesses.

Another display of the level of work in the first years is the number of FBI interviews performed in each quarter, demonstrated in Exhibit 7.

The data shown in all three exhibits also show the gradual decline in activity after the first quarter of 1990, at the completion of the *Poindexter* trial. An increase in office activity, beginning in late 1991, was due to the discovery of evidence uncovered by the continuing investigation team during the preceding two years, beginning in early 1990. This evidence was the result of: (a) questioning those who had been indicted and tried (North, Poindexter, etc.); (b) further analysis of highly classified documents provided by the intelligence agencies; and (c) discovery and analysis of notes and other recently obtained documents.

This evidence led to several more indictments and trials. Additional trial attorneys, paralegals and legal secretaries were hired to handle this additional litigation workload. They and other personnel left shortly after those awaiting trial were pardoned by the President in December 1992.

EXHIBIT 1:

OFFICE OF INDEPENDENT COUNSEL

LAWRENCE E. WALSH

Statement of Expenses
for the Period December 19, 1986 (Inception)
through Closing (Note 1)*

Personnel Compensation and benefits (Note 3)*	$20,867,202
Travel	1,210,994
Rent, Communications and Equipment	9,924,315
Contractual Services	2,924,481
Supplies and Materials	651,206
Acquisition of Capital Assets (Note 4)*	1,243,506
Administrative Services	862,102
	$37,683,806

*The accompanying notes and exhibits are an integral part of this Statement.

Notes to Statement of Expenses

Note 1. Accounting Period

This Statement of Expenses covers the entire period of the operations of the Office of Independent Counsel Lawrence E. Walsh (OIC-Walsh). Although not precisely known at the time of preparation of this Statement, the final date is estimated to be in the month of August 1993, shortly after Independent Counsel Walsh has submitted his Final Report to the Special Division of the U.S. Court of Appeals.

Certain other required administrative tasks will remain to be completed, including the transfer of OIC-Walsh documents to the National Archives, transfer of property and office equipment inventories to the Department of Justice, and other related termination activities. The end date in Exhibit 2, September 30, 1993, does not represent the closing date of this office; it is merely the last day of the normal six-month accounting and reporting period to be audited by the General Accounting Office.

In recognition of the fact that there may be material OIC-Walsh charges to the Independent Counsel Indefinite Appropriation after the office is terminated, Exhibit 2 describes an additional accounting period, of undetermined length, to recognize future charges, credits and other accounting adjustments made after September 30, 1993. The accrued liability shown in this period, $165,465, represents employee severance payments to be paid after September 30, 1993. Other expenditures of unknown amounts will occur; see Note 3, Contingent Liabilities.

Note 2. Basis of Accounting

The accompanying Statement of Expenses was prepared using a "modified cash basis" of accounting, a comprehensive basis of accounting differing slightly from generally accepted accounting principles. OIC-Walsh initially used the "cash basis" of accounting, relying on the AOUSC's monthly *Status of Funds Reports* to summarize expenditures every six months, and report them to the Special Division of the U.S. Court of Appeals as required by 28 U.S.C. § 594(h)(1)(A). However, these first six-month reports were distorted in that many major costs were billed on a semi-annual or annual basis, such as office rent, contract security, etc. As these periodic invoices arrived at AOUSC in a given month and were paid, the entire expenditure was recorded in that month. As a result, some six-month periods indicated very low expenditures (cash payments), and other periods inordinately high. Consequently, beginning in October 1991, the office computed and posted monthly accruals for most major expenses, thus "modifying" the cash-based *Status of Funds Reports* from AOUSC.

Since the amount of $30,303,000 was based primarily on AOUSC records of expenditures, the amount does not include March 1992 accruals, and vendor invoices posted as expenses to OIC-Walsh records but not yet paid by AOUSC. The amount of these unrecognized expenses, $147,316, is included in Exhibit 3 as Unrecorded Accruals.

Note 3. Contingent Liabilities

Additional costs are likely to be charged to OIC Walsh well after the close of the office, as a result of GAO and AOUSC's determinations that OIC-Walsh employees are Executive branch employees:

a. Severance Pay. GAO counsel has ruled that those OIC-Walsh employees who came to work for OIC-Walsh directly from federal civil service employment are eligible for severance pay upon termination of OIC employment (5 USC § 5595). The maximum amount of severance pay chargeable to OIC-Walsh, assuming all eligible employees do not resume federal Government employment, is $294,357. Of this amount $165,475 would be disbursed after September 30, 1993. The remaining is included in the estimates for the previous accounting period.

b. Retirement Benefits. OIC employees were not allowed to enroll in federal Government retirement programs until December 1992. At that time, OIC employees began to enroll in them and to apply for retroactive payments. The final cost of providing retroactive retirement coverage cannot be determined with any reasonable degree of certainty; thus, no dollar amount is offered as an accrued liability in the final period. Amounts ranging from $300,000 to $1,500,000 have been calculated based on various speculative assumptions.

c. Shift Differential Premium. GAO counsel has also ruled that OIC personnel who worked

non-standard hours are entitled to shift differential premium pay in accordance with 5 USC § 5545. No estimate of these costs is offered until a comprehensive audit of all employee time-and-attendance records and other documents, begun in June 1993, has been completed.

d. Unrecorded Additions. Additional OIC Walsh expenses, not recorded on the records of AOUSC or OIC-Walsh, are also shown in Exhibit 3, amounting to $2,714,351. This amount is comprised of expenditures in two areas:

(1) Defense SCIF construction costs of $338,351 were charged to Department of Justice appropriations. Justice has requested that this amount be credited to its account and debited to the Independent Counsel Indefinite Appropriation as an OIC-Walsh charge.

(2) Justice also charged the Independent Counsel Indefinite Appropriation approximately $1,800,000 (unaudited) for contract security guards at the defense SCIF during the reporting period covered by the first GAO audit (December 1986–March 1992). It similarly charged $288,000 (unaudited) for the next accounting period, and another $288,000 for the next period, for total defense SCIF contract security costs of $2,376,000.

Note 4. Contingent Assets

Certain events may occur after the office is closed that would serve to materially reduce the total costs attributable to the Independent Counsel Walsh Iran/contra investigation and litigation. Because no reporting mechanism exists to account for these contingent credits, they are presented here for the record. They are:

a. Vendor Overpayments. Vendor errors were discovered in the process of internal accounting and control audits, resulting in overcharges to the office amounting to $24,568. Attempts to recoup the overcharges (see notes to Report of Expenses for period ending March 31, 1993, OIC-Walsh letter (ser\101) dated April 30, 1993), were taken, and continue. If not resolved by the time the office closes, the Department of Justice Management Division will be asked to pursue these issues.

b. Agency Overcharges. Reversal of questionable court security telephone toll charges ($4,160), and undocumented AOUSC charges to office rent ($19,268) have been requested.

c. Supplies and Materials. After the December 25, 1992, Presidential pardons, many of the supplies and materials accumulated to support the scheduled trials were no longer needed. In the process of reducing operations, excess supplies and materials amounting to $103,000 were transferred to the other Independent Counsel, Adams and DiGenova.

d. Capital Assets. Virtually all of the capital equipment purchased, consisting of office furniture, computers, telephones, alarm systems and copying equipment, will be transferred to the Department of Justice for further Government use. While these assets have depreciated since they were initially acquired, considerable functional, as well as book, value still remains. A conservative calculation, based on a straight-line, three-year depreciation schedule, results in approximately $150,000 of residual book value remaining.

e. Clines Prosecution Costs. OIC-Walsh has petitioned the U.S. District Court, District of Maryland, to recover the costs of prosecution, $24,278, in *U.S.* v. *Thomas G. Clines*; as part of his sentence, Clines was required to pay for the cost of the prosecution. Since all of these costs were borne initially by OIC-Walsh, the cash deposit to the U.S. Treasury should be accompanied with a credit to the Independent Counsel Indefinite Appropriation, OIC-Walsh (9x-392743).

f. Enterprise Funds in Swiss Banks. Recovery of the funds remaining in the Swiss Bank accounts of the Enterprise participants, approximately $11 million, should be taken into consideration.

EXHIBIT 2:

OIC-WALSH
Recorded Expenses by Audit Periods

	Major Categories	Inception to 3/31/92	4/1/92 to 9/30/92 (audited)	10/01/92 to 3/31/93	4/1/93 to 9/30/93 (estimate)	10/01/93 to End (estimate) (Note 3)	Estimated TOTAL	%
1	Personnel Compensation & Benefits	$16,512,000	$1,503,813	$1,490,035	$1,195,879	165,475	20,867,202	55.4%
2	Travel Expenses	1,010,000	96,861	77,923	26,210	0	1,210,994	3.2%
3	Rent, Communications, Equipment	8,257,000	659,524	653,862	353,929	0	9,924,315	26.3%
4	Contractual Services	2,135,000	344,762	265,719	179,000	0	2,924,481	7.8%
5	Supplies and Material	562,000	54,815	25,191	9,200	0	651,206	1.7%
6	Acquisition of Capital Assets	1,167,000	43,897	25,801	6,808	0	1,243,506	3.3%
7	Administrative Services	660,000	81,635	71,203	49,264	0	862,102	2.3%
	TOTAL EXPENSES:	$30,303,000	$2,785,307	$2,609,734	$1,820,290	$165,475	$37,683,806	100%

Costs by Major Category

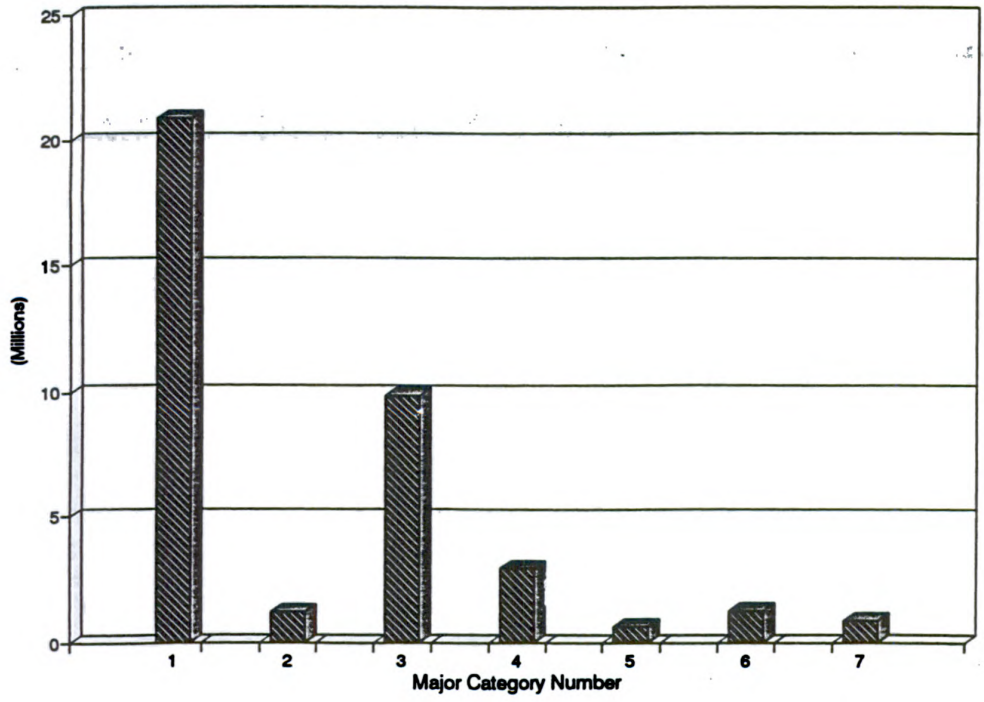


Exhibit 2

EXHIBIT 3:

OIC-WALSH
Compilation of Total Recorded and Unrecorded Costs

	Major Categories	Total Recorded Expenses	Unrecorded Additions (defense SCIF)	Unrecorded Accruals (Note 2)	Adjusted Total expenses	%
1	Personnel Compensation & Benefits (Note 3)	20,867,202			20,867,202	51.5%
2	Travel Expenses	1,210,994			1,210,994	3.0%
3	Rent, Communications, Equipment	9,924,315			9,924,315	24.5%
4	Contractual Services	2,924,481	2,714,351	147,316	5,786,148	14.3%
5	Supplies and Material	651,206			651,206	1.6%
6	Acquisition of Capital Assets	1,243,506			1,243,506	3.1%
7	Administrative Services	862,102			862,102	2.1%
	TOTALS:	$37,683,806	$2,714,351	$147,316	$40,545,473	100.0%

EXHIBIT 4:

OIC WALSH
Segregation of Defense SCIF Costs and Other Security Related Costs

	Major Categories	OIC Regular Expenses	Defense SCIF Expenses	Other Security Related Expenses	Adjusted Total Expenses	%
1	Personnel Compensation & Benefits	19,806,279	0	1,060,923	20,867,202	51.5%
2	Travel Expenses	1,152,145	2,757	56,092	1,210,994	3.0%
3	Rent, Communications, Equipment	6,879,449	2,782,276	262,590	9,924,315	24.5%
4	Contractual Services	1,653,097	2,848,455	1,284,596	5,786,148	14.3%
5	Supplies and Material	534,581	39,657	76,968	651,206	1.6%
6	Acquisition of Capital Assets	933,596	214,515	95,395	1,243,506	3.1%
7	Administrative Services	600,375	176,630	85,097	862,102	2.1%
	TOTALS:	$31,559,523	$6,064,289	$2,921,661	$40,545,473	100.0%

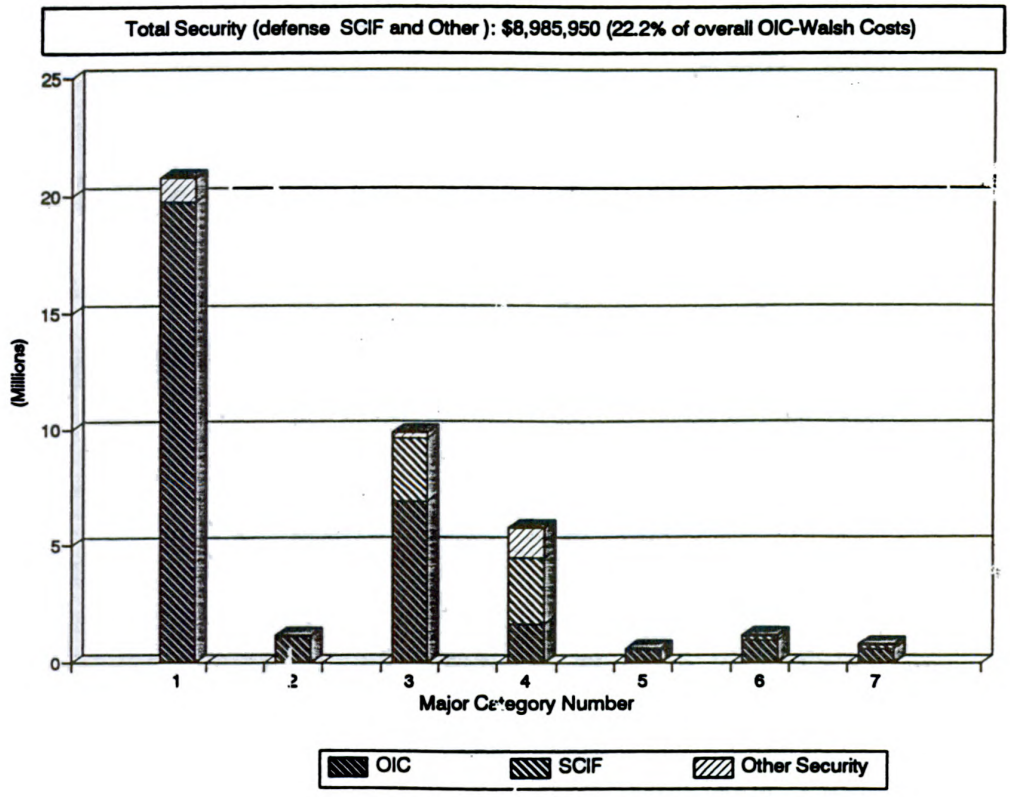


EXHIBIT 5

OIC-WALSH
COSTS BY CALENDAR YEAR

Cal. Yr.	OIC	SCIF	Total
1987	$4,687,604		$4,687,604
1988	7,440,921	$232,474	7,673,394
1989	6,420,071	231,136	6,651,207
1990	5,768,245	236,985	6,005,230
1991	4,242,499	125,702	4,368,201
1992	4,347,424	502,889	4,850,312
1993 (est)			3,447,856

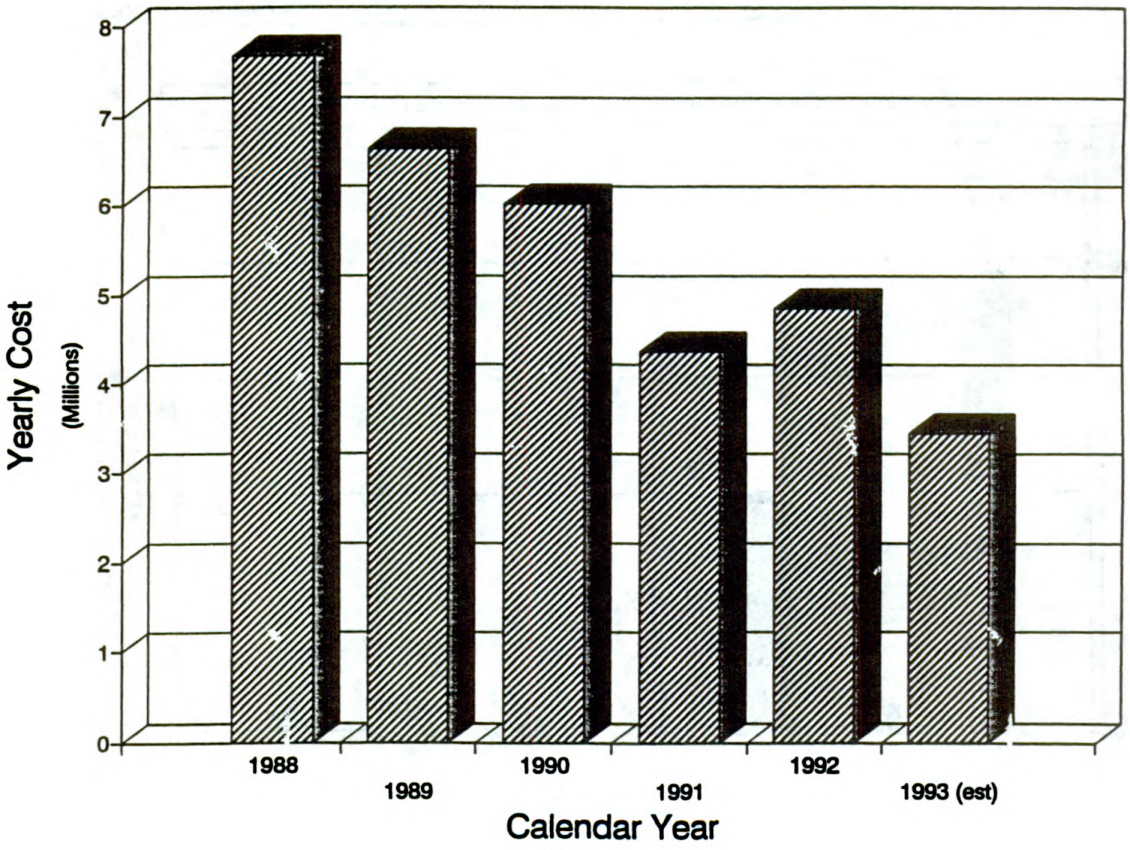
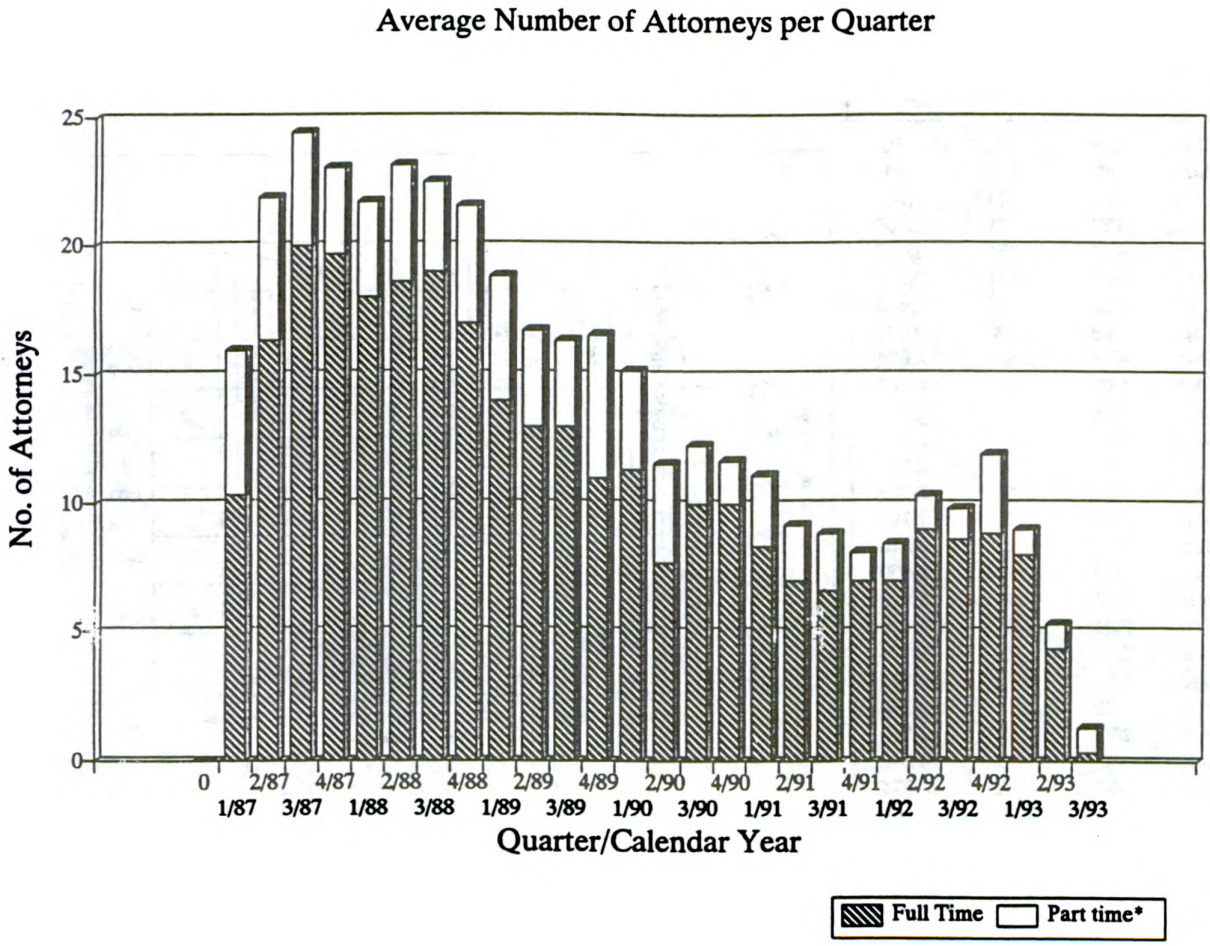


Exhibit 5

EXHIBIT 6

OIC-WALSH

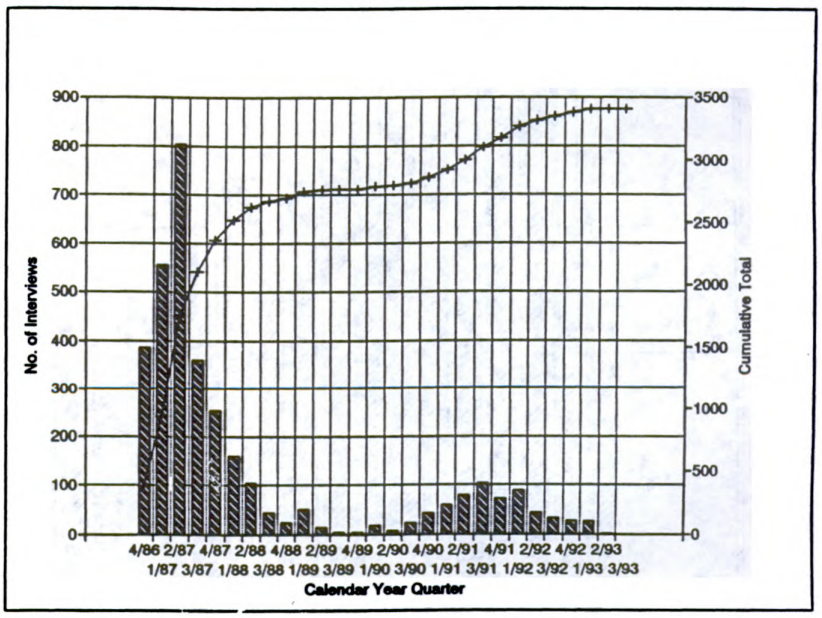


Part-time: Attorneys working on a "when actually employed" basis, converted to full-time equivalents.

EXHIBIT 7

OIC-WALSH
Number of FBI Interviews (302's) per Quarter

Inclusive Dates	Cal. Quarter	No. of Interviews	Cum. Total
Oct-Dec	4/86	385	385
Jan-Mar	1/87	556	941
Apr-Jun	2/87	804	1,745
Jul-Sep	3/87	361	2,106
Oct-Dec	4/87	254	2,360
Jan-Mar	1/88	161	2,521
Apr-Jun	2/88	105	2,626
Jul-Sep	3/88	44	2,670
Oct-Dec	4/88	24	2,694
Jan-Mar	1/89	52	2,746
Apr-Jun	2/89	14	2,760
Jul-Sep	3/89	5	2,765
Oct-Dec	4/89	4	2,769
Jan-Mar	1/90	18	2,787
Apr-Jun	2/90	7	2,794
Jul-Sep	3/90	22	2,816
Oct-Dec	4/90	43	2,859
Jan-Mar	1/91	60	2,919
Apr-Jun	2/91	81	3,000
Jul-Sep	3/91	104	3,104
Oct-Dec	4/91	73	3,177
Jan-Mar	1/92	91	3,268
Apr-Jun	2/92	45	3,313
Jul-Sep	3/92	33	3,346
Oct-Dec	4/92	28	3,374
Jan-Mar	1/93	26	3,400
Apr-Jun	2/93	1	3,401
Jul-Sep	3/93	0	3,401
Oct-Dec	4/93	—	



Memo 6525

Memorandum

Subject

Expenses Relating to the Iran/Contra Prosecutions

Date

APR 1 1988

To

Michael J. Roper
Deputy Assistant Attorney General
Office of the Controller

From

Janis A. Sposato
General Counsel
Justice Management Division

You have asked for our opinion regarding the appropriate funding source for the payment of expenses related to the establishment and operation of a secure document facility for use by defense counsel representing individuals indicted by the Iran/Contra Independent Counsel. As we understand the present proposal, the secure document facility would provide a location, away from the offices of the Independent Counsel or other government agencies, where defense counsel, as well as their clients and witnesses, may examine classified documents that are required to be made available to them pursuant to the various rules governing discovery in criminal litigation.

We understand that the general categories of expenses are as follows:

- the lease of space for the facility.
- renovation, construction and equipment for the facility, including all necessary security features.
- building security guards.
- personnel who will serve as document custodians. 1/
- a court security officer or officers

In our view the presumptive source for the funding of these expenses is the appropriation that funds the operations of the Independent Counsel. The only clear exceptions from this presumption are the direct expenses of the court security officers. For a number of years these expenses have been listed in Congressional submissions as part of the budget of the

1/ It is our understanding that an independent contractor will most likely be retained and that its employees will act as document custodians.

Security Staff of the Justice Management Division. Accordingly, these expenses would continue to be paid from the General Administration Appropriation.

Another possible exception, and one that we have not fully researched, would allow defense counsel and/or the intelligence agencies whose documents are at issue to fund extra expenses undertaken for their convenience (defense counsel) or to afford additional security to their documents (the intelligence agencies). Such contributions are not required and they may or may not pertain to a significant portion of the overall cost.

Our reasoning in reaching these conclusions is as follows:

The Independent Counsel Appropriation

Providing Jenks material, Brady material, and other required discovery is a well established part of a prosecutor's function. Accordingly, expenses incident to the production of such documents are necessary expenses of the prosecution. While this would be true of any prosecution, we particularly note that the permanent indefinite appropriation that funds the Independent Counsel specifically states that it is available "to pay all necessary expenses of investigations and prosecutions by independent counsel ..." 2/

In this case the expenses of discovery and document production are much greater than usual as a result of the classified status of so large a volume of discovery materials. Nonetheless, the amount of the expense does not change its essential character. It is the responsibility of the prosecutor to make these documents available to the defense, and the classified document facility is accordingly a necessary expense of the prosecution that Congress has directed be funded from the appropriation for the Independent Counsel.

Contributions from Defense Counsel and Other Federal Agencies

To the extent that this manner of providing documents has been chosen to accommodate the special needs of defense counsel or other Federal agencies, it may be possible to construct a theory under which the Department could accept reimbursement or contributions from those parties for additional costs incurred on

2/The 1988 Fiscal Year Continuing Resolution, Public Law 100-202 (100th Congress, 1st Session), created a permanent indefinite appropriation within the Department of Justice to fund Independent Counsel expenses.

their behalf. These possible theories have not been explored in detail because we are unaware of any realistic possibility that such contributions or reimbursements might be forthcoming. We will examine these issues further should you indicate that there is a need to do so.

Court Security Officer Expenses

Following enactment of the Classified Information Procedures Act (CIPA) (18 U.S.C. App III) a set of Security Procedures was issued by the Chief Justice pertaining to the handling of classified information in "the custody of the...court." Id. § 9. The Executive Branch helped to draft these procedures and agreed to a provision requiring that all resulting court security costs would be borne by the Executive Branch. (See Security Procedures, § 12) 3/

As a consequence of this agreement, the salaries of court security officers have been paid by the Department of Justice. In addition, recent budgets submitted to Congress in support of the Department of Justice appropriation for General Administration have included a specific item for the salaries of court security officers.

The court security officer function created under the CIPA Security Procedures only encompasses the care and custody of documents in the custody of the court. It does not entail the production of documents for examination by defense counsel. As indicated above, those are prosecutorial functions that should be funded as necessary expenses of the Independent Counsel.

3/We have not sought to address the potential issue of whether an Executive Branch appropriation may fund what appears to be a Judicial Branch function.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
	)	
	)	
v.	)	Criminal No. 88-0080
	)	
JOHN M. POINDEXTER	)	
OLIVER L. NORTH	)	
RICHARD V. SECORD	)	
ALBERT HAKIM	)	

FILED

APR 15 1988

JAMES F. DAVEY, Clerk

PROTECTIVE ORDER

The Court having considered the motion of the government for a protective order, the declaration in support thereof, the defendants' opposition, and all other papers and proceedings related thereto,

It is hereby ORDERED that, pursuant to section 3 of the Classified Information Procedures Act, 18 U.S.C. App. IV, § 3, the following Protective Order is entered:

1. The Court finds that this case will involve information that has been classified in the interest of national security. The storage, handling and control of this information will require special security precautions. The purpose of this Order is to establish procedures that must be followed by counsel and the parties in this case. These procedures will apply to all pretrial matters concerning this case and may be modified from time to time by further order of the Court acting under its

inherent supervisory authority to ensure a fair and expeditious trial.

2. Definitions. The following definitions shall apply to this Order:

a. "Classified information" shall mean:

(i) any document or information which has been classified by any executive agency in the interests of national security or pursuant to Executive Order 12356 as "confidential," "secret," "top secret" or "sensitive compartmented information,"

(ii) any document or information now or formerly in the possession of a private party which (A) has been derived from information from the United States government that was classified and (B) has subsequently been classified by the government pursuant to Executive Order 12356 as "confidential," "secret," "top secret" or "sensitive compartmented information."

b. "Document" shall mean any material containing information. The term "document" shall include, without limitation, letters, reports, summaries, memoranda, notes, communications, telexes, cables, telecopies, reports, photographs, charts, graphs, maps, invoices, accountings, worksheets and messages. The term "document" also shall include, without limitation, all recordings of information on magnetic,

electronic or optical media such as audio or video tapes, computer tapes or disks, films and all manner of electronic data processing storage.

c. "Access to classified information" means having access to, reviewing, reading, learning, or otherwise coming to know in any manner any classified information.

d. "SCIF" shall mean a sensitive compartmented information facility accredited for the storage, handling and control of classified information.

3. The Court Security Officer shall arrange for the creation, construction, maintenance and operation of a SCIF at 1025 Connecticut Ave., N.W., Washington, D.C. for the use of defendants, counsel for defendants and employees of counsel for defendants. The Court Security Officer shall establish procedures to assure that the SCIF is accessible to defendants, counsel for defendants, employees of counsel for defendants and authorized witnesses accompanied by counsel for defendants twenty-four hours daily every day of the year, including weekends and holidays. The SCIF shall contain separate working areas for the counsel for each defendant and will be outfitted with any secure office equipment requested by the defendants that is reasonable and necessary to the preparation of their defense. The Court Security Officer, in consultation with counsel for defendants, shall establish procedures to assure that the SCIF may be maintained and operated in the most efficient manner consistent with the protection of classified information.

Finally, pending the availability of defendants' SCIF, defendants, counsel for defendants, employees of counsel for defendants and authorized witnesses accompanied by counsel for defendants shall have access twenty-four hours daily to the Independent Counsel's SCIF to the extent space is available for appropriate examination and use of any classified materials provided through discovery by the government, subject to the general provisions of this Order.

4. Filing Of Papers By Defendants. Any pleading or other document filed by defendants shall be filed under seal with the Court through the Court Security Officer. The Court Security Officer shall promptly examine the pleading or document and, in consultation with representatives of the appropriate agencies, determine whether the pleading or document contains classified information. If the Court Security Officer determines that the pleading or document contains classified information, he shall ensure that that portion of the document, and only that portion, is marked with the appropriate classification marking and remains under seal. All portions of all papers filed by defendants that do not contain classified information, shall be immediately unsealed by the Court Security Officer and placed in the public record. The Court Security Officer shall immediately deliver under seal to the Court and the Office of Independent Counsel any pleading or document to be filed by the defendants that contains classified information; the Court shall then direct the clerk to enter on the docket sheet the title of the pleading or

document the date it was filed, and the fact that it has been filed under seal with the Court Security Officer.

5. Filing Of Papers By The Government. Only the portions of pleadings or documents filed by the government containing classified information shall be filed under seal with the Court through the Court Security Officer.

6. Protection Of Classified Information. The Court finds that, in order to protect the classified information involved in this case, no person except a defendant, counsel for defendant, employee of counsel for a defendant or defense witness shall have access to the classified information involved in this case. No counsel for a defendant, employee of counsel for a defendant or defense witness shall have access to any classified information in this case unless that person shall first have:

a. received an approval for access to the appropriate level of classification from the Court on a need to know basis; and

b. signed the Memorandum Of Understanding in the form attached hereto agreeing to comply with the terms of this Order.

7. Access To Classified Information. Defendants, counsel for defendants, employees of counsel for defendants and witnesses accompanied by counsel for defendants shall have access to classified information only as follows:

a. All classified information produced by the government to defendants in discovery or otherwise, and all classified information possessed, created or maintained by defendants, shall

be stored, maintained and used only in the SCIF.

b. Defendants, counsel for defendants and employees of counsel for defendants shall have free access to the classified information made available to them in the SCIF and shall be allowed to take notes and prepare documents with respect to those materials.

c. No person, including any defendant, counsel for a defendant, employee of counsel for a defendant or defense witness, shall copy or reproduce any classified information in any manner or form, except with the approval of the Court Security Officer or in accordance with procedures established by the Court Security Officer for the operation of the SCIF.

d. All documents prepared by the defense (including without limitation, pleadings or other documents intended for filing with the Court) that do or may contain classified information must be prepared in the SCIF on TEMPEST-approved word processing equipment and in accordance with the procedures approved by the Court Security Officer. All such documents and any associated materials (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, exhibits) containing classified information shall be maintained in the SCIF unless and until the Court Security Officer determines that those documents or associated materials are unclassified in their entirety.

e. Defendants, counsel for defendants, employees of counsel for defendants and defense witnesses shall discuss classified information only within the SCIF or in an area

authorized by the Court Security Officer.

f. Defendants, counsel for defendants, employees of counsel for defendants and defense witnesses shall not discuss classified information over any standard commercial telephone instrument or office intercommunication systems.

g. Any documents written by the defense that do or may contain classified information shall be transcribed, recorded, typed, duplicated, copied or otherwise prepared only by persons who have received an appropriate approval for access to classified information.

8. Classified Information Procedures Act. Procedures for the public disclosure of classified information by the defense shall be those sections 5 and 6 of the Classified Information Procedures Act, 18 U.S.C. App. IV ("CIPA"). No classified information may be disclosed by the defense except:

a. To the Court, court personnel, and government attorneys and their agents and employees identified by the Court Security Officer as holding proper approvals for access to classified information;

b. To representatives of the agency or department originating the classified information who have been identified by the Court Security Officer as holding proper security clearances and having the need to know the classified information;

c. In accordance with the procedures of CIPA and the procedures established by the Court Security Officer; and

d. To persons who have been authorized to have access to classified information pursuant to this Order or to CIPA.

9. Any unauthorized disclosure of classified information may constitute violations of United States criminal laws. In addition, any violation of the terms of this Order shall be immediately brought to the attention of the Court and may result in a charge of contempt of Court and possible reference for criminal prosecution. Persons subject to this Order are advised that direct or indirect unauthorized disclosure, retention or negligent handling of classified documents or information could cause serious damage, and in some cases exceptionally grave damage, to the national security of the United States or may be used to the advantage of a foreign nation against the interests of the United States.

10. All classified information to which any defendant, counsel for a defendant, employee of counsel for a defendant or defense witness has access in this case are now and will remain the property of the government. Any defendant, counsel for a defendant, employee of counsel for a defendant or defense witness shall return all classified information in their possession obtained through discovery from government in this case, or for which they are responsible because of access to classified information, upon demand of the Court Security Officer. The notes, summaries and other documents prepared by the defense that do or may contain classified information shall remain at all times in the custody of the Court Security Officer for the

duration of this case. At the conclusion of this case, all such notes, summaries and other documents are to be destroyed by the Court Security Officer in the presence of counsel for defendants.

11. A copy of this Order shall be issued forthwith to counsel for all defendants who shall be responsible for advising defendants, employees of counsel for defendants and defense witnesses of the contents of this Order. Each defendant, counsel for a defendant, employee of counsel for a defendant and defense witness to be provided access to classified information shall execute the Memorandum Of Understanding described in paragraph 6 of this Order and counsel for defendants shall file executed originals with the Court and the Court Security Officer and serve an executed original of such document upon the government. The execution and filing of the Memorandum Of Understanding is a condition precedent for a defendant, counsel for a defendant, employee of counsel for a defendant and defense witness to have access to classified information.

Gerhard A. Gesell
UNITED STATES DISTRICT JUDGE

April 15, 1988.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
	)	
	)	
v.	)	Criminal No. 88-0080
	)	
JOHN M. POINDEXTER	)	
OLIVER L. NORTH	)	
RICHARD V. SECORD	)	
ALBERT HAKIM	)	

MEMORANDUM OF UNDERSTANDING

I have received, read and understand the Protective Order entered by the United States District Court For The District Of Columbia on April 15, 1988 in this case and I agree to comply with its provisions and to provide the information requested below. I understand that direct or indirect unauthorized disclosure, retention or negligent handling of classified documents or information could cause serious damage, and in some cases exceptionally grave damage, to the national security of the United States or may be used to the advantage of a foreign nation against the interests of the United States.

Name:

Social Security No.:

Date and Place of Birth:

Signature

Date

Appendix A
Staff Appointments

Appointments, Lawyers

Walsh, Lawrence E.

Abrams, Stuart E.
Apfel, David J.
Baker, Thomas E.
Barrett, John Q.
Been, Vicki L.
Bellows, Randy I.
Berman, Geoffrey S.
Bever, Thomas D.
Blaney, Bryan
Bromwich, Michael R.
Brosnahan, Jr., James J.
Douglass, John G.
Ellis, Steven A.
Feldman, James A.
Ford, Richard C.
Francis, Vernon L.
Frey, Andrew L.
Friedman, Paul L.
Gillen, Craig A.
Green, Bruce A.
Harleston, Jeffrey S.
Harris, George C.
Harriss, Lowell Gordon
Hassler, William T.
Hellring, Heidi H.
Hetherton, Judith
Ianniello, Antonia B.
Jordan, Sandra D.
Keker, John W.
Lee, William F.
Lesser, Seth R.
Longstreth, Robert C.
Loughlin, Walter P.
Lynch, Gerard E.
Mark, Gregory A.
McCollum, Jr., James E.
Meltzer, Daniel J.
Mixter, Christian J.
Parsigian, Kenneth J.
Pearl, Howard M.
Radin, Louise R.
Roth, Kenneth T.
Rothfeld, Charles A.
Saltzburg, Stephen A.
Sharton, Brenda R.
Shtasel, Laurence S.
Shwartz, Robert N.
Sloan, Clifford M.
Spaulding, Christina A.
Stern, Herbert J.
Stewart, Geoffrey S.
Strauss, Audrey
Struve, Guy M.
Todd, K. Chris
Toobin, Jeffrey R.
Treanor, William M.
Tribe, Laurence H.
Vhay, Michael D.
Wallach, Laurie R.
Ware, Jr., Paul F.
Webb, Dan K.
Wechsler, Herbert
Weingarten, Reid H.
Weygandt, James P.
Wilkins, III, Samuel A.
Wolfson, Evan C.
Yannett, Bruce E.
Zornow, David M.

Chronological Appointments, Lawyers

FT	Full-time
WAE	Part-time (When Actually Employed)
WOC	Without Compensation
LWOP	Leave Without Pay

NAME	STATUS	DATE OF APPOINTMENT	DATE OF SEPARATION
1986			
WALSH, Lawrence E.		12–19–86 U.S. Court of Appeals Appointment Letter 3–05–87 Civil Service Appointment Form	
FORD, Richard C.	WAE	12–24–86	3–09–87
	WOC	3–10–87	8–04–93
DOUGLASS, John G.	WAE	12–29–86	4–20–90
1987			
FRIEDMAN, Paul L.			
Associate Counsel	WAE	1–06–87	5–26–88
Special Counsel	WAE	5–25–88	1–09–90
BERMAN, Geoffrey S.	FT	1–06–87	3–19–90
	WAE	3–19–90	7–19–90
	FT	7–19–90	9–22–90
KEKER, John W.	WAE	1–06–87	1–20–90
STRAUSS, Audrey	WAE	1–06–87	9–15–89
BROMWICH, Michael R.	FT	1–07–87	10–13–89
	WAE	11–27–89	2–06–90
	WAE	5–24–91	9–16–91
MIXTER, Christian J.	FT	1–07–87	3–23–91
SHWARTZ, Robert N.	WAE	1–07–87	1–27–87
	FT	1–27–87	4–25–88

NAME	STATUS	DATE OF APPOINTMENT	DATE OF SEPARATION
STRUVE, Guy M.			
Associate Counsel	WAE	1–07–87	10–01–88
Special Counsel	WAE	9–30–88	
ZORNOW, David M.	FT	1–07–87	9–15–89
SLOAN, Clifford M.	FT	1–14–87	12–12–88
BELLOWS, Randy I.	FT	1–15–87	1–19–88
BEEN, Vicki L.	FT	1–29–87	5–30–88
	WAE	5–30–88	7–31–90
HETHERTON, Judith	FT	1–30–87	6–10–88
TOOBIN, Jeffrey R.	FT	1–30–87	5–05–89
WEYGANDT, James P.	FT	1–30–87	10–03–88
YANNETT, Bruce E.	FT	1–30–87	12–02–88
RADIN, Louise R.	FT	1–31–87	1–27–91
HASSLER, William T.	FT	2–23–87	3–15–90
McCOLLUM, Jr., James E.	FT	2–25–87	1–19–88
TODD, K. Chris	FT	3–12–87	3–10–89
STEWART, Geoffrey S.	WAE	4–01–87	10–31–90
ROTH, Kenneth T.	FT	5–20–87	12–10–87
SHTASEL, Laurence S.	FT	6–17–87	2–23–90
FELDMAN, James A.	FT	6–18–87	11–10–89
HARRISS, Lowell Gordon	WAE	7–06–87	10–23–87
	WOC	5–04–88	8–04–93
LEE, William F.	WAE	7–06–87	7–05–90
TREANOR, William M.	FT	7–06–87	3–22–93
	WAE	3–22–90	7–02–90
	FT	7–02–90	12–31–90
	WAE	12–31–90	8–04–93

NAME	STATUS	DATE OF APPOINTMENT	DATE OF SEPARATION
1988			
STERN, Herbert J.	WAE	2–05–88	2–27–90
TRIBE, Laurence H.	WOC	2–16–88	10–13–88
SALTZBURG, Stephen A.	WAE	2–17–88	6–12–88
HELLRING, Heidi H.	WAE	2–24–88	3–23–90
LONGSTRETH, Robert C.	FT	2–25–88	6–22–89
	LWOP	12–12–88	2–27–89
	WAE	8–24–89	1–08–93
BARRETT, John Q.	FT	3–08–88	7–30–93
WALLACH, Laurie R.	FT	3–08–88	4–06–90
WOLFSON, Evan C.	FT	4–11–88	4–17–89
JORDAN, Sandra D.	WAE	4–12–88	5–19–91
GREEN, Bruce A.	FT	6–24–88	6–30–91
LYNCH, Gerard E.	WAE	6–27–88	6–18–90
WEINGARTEN, Reid H.	WAE	8–22–88	1–17–91
IANNIELLO, Antonia B.	WAE	9–30–88	4–04–91
MELTZER, Daniel J.	WAE	12–03–88	1–08–93
LOUGHLIN, Walter P.	WAE	12–07–88	1–08–93
1989			
BLANEY, Bryan	FT	5–25–89	7–13–91
FRANCIS, Vernon L.	FT	6–28–89	5–29–92
	WAE	6–22–93	8–04–93
MARK, Gregory A.	FT	7–25–89	12–11–92
	WAE	12–12–92	8–04–93
ABRAMS, Stuart E.	WAE	8–14–89	1–08–93
WEBB, Dan K.	WAE	8–30–89	2–19–91
WECHSLER, Herbert	WAE	11–16–89	1–08–93

NAME	STATUS	DATE OF APPOINTMENT	DATE OF SEPARATION
PEARL, Howard M.	WAE	10–20–89	3–19–91
GILLEN, Craig A.			
Associate Counsel	FT	12–12–89	12–06–91
Deputy Independent Counsel		12–06–91	7–30–93
1990			
BEVER, Thomas D.	FT	5–09–90	5–19–91
VHAY, Michael D.	FT	8–10–90	7–30–93
FREY, Andrew L.	WAE	12–07–90	12–08–92
ROTHFELD, Charles A.	WAE	12–12–90	11–18–92
1991			
LESSER, Seth R.	WOC	1–10–91	8–04–93
BAKER, Thomas E.	FT	7–19–91	7–10–92
	WAE	7–10–92	8–04–93
WILKINS, III, Samuel A.	FT	7–30–91	6–12–93
	WAE	6–12–93	8–04–93
1992			
PARSIGIAN, Kenneth J.	FT	4–03–92	5–31–93
	WAE	5–31–93	8–04–93
SPAULDING, Christina A.	FT	4–24–92	4–28–93
	WAE	6–10–93	8–04–93
HARLESTON, Jeffrey S.	FT	5–01–92	5–21–93
	WAE	5–21–93	8–04–93
ELLIS, Steven A.	FT	8–03–92	3–29–93
	WAE	3–29–93	8–04–93
BROSNAHAN, Jr., James J.	WAE	10–15–92	12–31–92
HARRIS, George C.	WAE	10–15–92	1–04–93
WARE, Jr., Paul F.	WAE	10–20–92	1–08–93
APFEL, David J.	WAE	10–26–92	1–08–93
SHARTON, Brenda R.	WAE	10–26–92	1–08–93

Appointments, Support Staff

FT	Full-time
WAE	Part-time (When Actually Employed)
WOC	Without Compensation
LWOP	Leave Without Pay

NAME	STATUS	DATE OF APPOINTMENT	DATE OF SEPARATION
ADAMS, Laura S. Paralegal	FT	7–05–88	7–28–89
ADAMS, Mi'guel Paralegal	FT	2–12–88	9–29–89
ALGOZZINE, Carmella B. Receptionist/Wordprocessor New York	WAE	1–22–88	4–29–88
ANDERSON, Paula G. Computer Specialist	FT	3–21–88	4–30–93
ANTOININ, Shirley A. Secretary	FT	6–17–87	6–01–90
ARROYO, Jose A. Paralegal	FT	5–22–87	1–12–90
BARROW, Kirsten E. Secretary	FT	8–15–88	1–11–89

NAME	STATUS	DATE OF APPOINTMENT	DATE OF SEPARATION
BELCHER, Mary J.			
Deputy Press Officer	FT	6–19–89	7–31–89
Press Officer	FT	7–31–89	8–04–93
BETTS, Kathleen A.	FT	3–09–87	
Secretary			
BLAKLEY, Joyce J.	FT	3–23–87	7–24–92
Paralegal			
BODNAR, Susan P.	FT	5–16–88	10–27–89
Paralegal			
BRAISTED, Christina K.	FT	6–01–87	8–21–87
Paralegal			
BREEN, Carolyn S.	FT	6–15–87	8–16–91
Paralegal			
BROTT, Cheryl M.	FT	5–26–87	8–22–88
Paralegal	FT	5–22–89	7–25–89
BROWN, Cynthia V.	WAE	5–29–87	7–20–87
Messenger	FT	7–20–87	9–09–88
BROWN, Lasata L.	FT	6–01–87	8–28–87
Clerk			
BRYAN, Marie N.	WAE	4–16–87	1–08–93
Secretary—Oklahoma			
CARMAN, Brenda S.	WAE	12–13–91	9–21–92
Secretary—Oklahoma	FT	9–21–92	
CARTER, Peter M.	WOC	5–31–88	__–__–88
Law Clerk			
CLAY, Catherine A.	FT	2–23–87	6–18–93
Documents Specialist			
COLOSIMO, Jr., Vincent T.	FT	8–26–91	8–04–93
Computer Specialist			
COPELAND, Rosetta	FT	3–21–88	6–02–93
Secretary			
CRANDELL, Jacqueline D.	FT	3–30–87	7–27–90
Secretary			

NAME	STATUS	DATE OF APPOINTMENT	DATE OF SEPARATION
CUFFIE, Frances H.			
Administrator	FT	4–05–87	8–12–88
Special Administrative Consultant	WAE	8–12–88	1–10–89
CUMMINGS, Len J.	FT	11–14–88	7–10–89
Messenger			
DAHL, Linda S.	FT	8–29–88	5–28–93
Security Assistant			
DOOHEN, Amy M.	FT	7–20–87	5–05–89
Secretary			
FARINA, Benga L.	WOC	1–18–89	5–__–89
Law Clerk			
FELDMAN, Dennis S.	FT	5–12–87	9–17–87
Press Officer			
FOOTE, Joseph	WAE	6–07–93	
Editor/Final Report			
FOTI, Janice K.	FT	4–01–87	7–22–88
Secretary			
FOX, William J.	WAE	2–19–88	2–21–91
Tax Specialist			
FREEDMAN, Susan C.	WOC	1–18–89	5–__–89
Law Clerk			
GAMBOLI, Jennifer J.	FT	8–19–91	
Paralegal			
GOODING, Pamela J.	FT	11–16–92	1–28–93
Secretary			
GORDON, Bradley M.	FT	7–18–88	7–05–89
Paralegal			
GORDON, Jeffrey B.	FT	4–01–87	6–10–88
Paralegal—New York			
GRIFFIN, Gertrude G.	FT	8–22–88	4–30–93
Secretary			
HAGINS, Linda F.	FT	4–27–87	4–06–90
Security Assistant			

NAME	STATUS	DATE OF APPOINTMENT	DATE OF SEPARATION
HENRY, Lora A. Secretary	FT	3–09–87	7–28–89
HICKS, Dorothy Secretary	FT	3–25–87	7–17–87
HOFFMAN, Herbert E. Administrator District of Columbia	FT	12–19–86	3–__–87
HOLLOWAY, Ella M. Secretary	FT	6–14–88	8–05–88
HOLT, Jr., Calvin S. Messenger/Facilities Maintenance	FT	7–30–87	
HOUSTON, Gloria M. Secretary	FT	2–01–88	4–30–93
HUNTER, Jacqueline W. Secretary	FT	4–08–87	4–30–93
HURST, Sandra F. Receptionist	FT	4–20–87	9–25–87
JACKSON, Margaret B. Procurement/Travel	FT	7–25–88	8–04–93
JEFFERSON, Glynetter D. Clerk-typist—New York	FT	3–30–87	11–13–87
JOHNSON, Gail M. Receptionist	FT	6–10–88	4–30–93
KANE, Veronica R. Secretary—New York	FT	4–04–88	7–15–88
KAPLAN, Matthew N. Paralegal	FT	6–20–88	5–12–89
KENDRALL, Joan B.			
Assistant Administrator	FT	4–02–87	12–23–87
Deputy Security Officer	FT	12–23–87	6–17–88
KORTZ, Jacob D. Documents Specialist	FT	2–02–87	

NAME	STATUS	DATE OF APPOINTMENT	DATE OF SEPARATION
KREMS, Pamela E.	FT	4–28–87	7–29–90
Paralegal			
LATTY, Pauline M.	FT	1–06–87	2–20–87
Secretary			
LAW, Cynthia F.	FT	2–29–88	5–05–90
Secretary			
MAKELL, Brian J.	FT	5–26–87	9–18–87
Messenger	WAE	9–18–87	8–08–90
	FT	8–08–90	8–20–90
	WAE	8–20–90	1–04–91
	WAE	5–06–91	1–08–93
MALLORY, Lisa M.			
Secretary	FT	5–01–87	5–15–88
Paralegal	FT	5–16–88	3–13–92
Special Assistant to Walsh	FT	8–17–92	
MARTIN, Lottie G.	FT	3–09–87	9–11–87
Deputy Security Director			
MASLINOFF, Patricia L.	FT	9–27–87	2–19–93
Computer Information Specialist	WAE	2–19–93	8–04–93
McCREARY–MADDOX, Carol L.			
Special Assistant to Walsh	FT	2–24–87	7–31–92
Administrator	FT	7–31–92	
MERCER, Jossette M.	FT	10–01–87	
Procurement Assistant			
MEYER, Willets S.	FT	2–26–90	8–10–90
Paralegal	FT	5–16–91	8–20–91
MIHAKLO, Rhonda L.	FT	3–30–87	7–31–89
Clerk-Typist			
MILLER, Wayne M.	FT	5–04–87	5–21–87
Messenger			
MINGO, Jackie			
Personnel Management Specialist	FT	3–11–87	12–23–87
Assistant Administrator	FT	12–23–87	8–01–88
Administrator	FT	8–02–88	7–31–92
Consultant	WAE	7–31–92	1–08–93

NAME	STATUS	DATE OF APPOINTMENT	DATE OF SEPARATION
MOORE, Valerie M. Computer Assistant	FT	10–11–87	4–30–93
NEWHAUS, Sharon R. Secretary	FT	3–31–87	6–26–87
NICHOLSON, Jennifer J. Secretary	FT	9–26–88	8–04–93
OLSEN, Fredrich	FT	3–31–87	9–11–89
Paralegal	WAE	9–11–89	10–17–90
	FT	9–03–91	12–11–92
PADOU, Paula D. Paralegal	WAE	11–17–92	1–08–93
PHILLIPS, Bryant (Wynn Wardell) Messenger	FT	9–06–88	5–18–90
PICKER, Leonard I. Law Clerk	WOC	8–22–88	12–16–88
POWERS, Pamela H. Assistant Administrator New York	FT	2–16–87	5–20–88
PRUITT, Regina W.			
Procurement Specialist	FT	1–26–87	8–01–88
Assistant Administrator	FT	8–01–88	1–07–91
REED, Patricia L. Secretary	FT	4–27–87	3–10–89
RODRIQUEZ, Patricia			
Receptionist	FT	3–02–87	6–15–87
Press Assistant	FT	6–16–87	11–25–87
ROONEY, Philip J. Financial Officer	FT	11–18–91	
ROOTS, Beatrice N. Paralegal	FT	5–23–88	1–26–90
RORIE, Joyce A. Secretary	FT	7–12–87	2–23–90
ROSENTHAL, Kristina E. Paralegal	FT	5–11–92	8–04–93

NAME	STATUS	DATE OF APPOINTMENT	DATE OF SEPARATION
SEMPLE, Megan W. Paralegal	FT	5–11–92	7–02–93
SHUMATE, Linda C. Secretary	FT	2–22–88	8–31–90
SILBERMAN, Claire Paralegal	FT	6–17–87	9–09–87
SIMMONS, James Security Assistant	FT	7–15–87	4–30–93
SINGLETON, Delores E. Press Assistant	FT	6–01–87	5–28–93
SMITH, Johnny L. Computer Assistant	FT	6–10–87	2–02–90
SMITH, Judy A. Deputy Press Officer	FT	9–15–87	3–24–89
SMITH, Michele L. Clerk	FT	3–16–87	5–04–87
SMITHTON, William Shane Paralegal	FT	6–05–89	8–25–89
SPINNETT, Mildred Secretary	FT	2–__–87	2–__–87
SPRINGER, Stephen M. Paralegal	FT	5–26–87	9–02–88
STALLSMITH, Laura M. Secretary	FT	7–01–87	3–02–90
STANSBURY, Allen F. Deputy Security Director Security Director	FT FT	9–06–87 12–23–87	12–23–87 8–04–93
STEVENS, Alesia D. Messenger	FT	9–21–87	3–24–89
TANG, Michael D. Paralegal	FT	8–17–92	7–02–93
THUME, Peggy J. Secretary	FT	8–15–88	8–04–93

NAME	STATUS	DATE OF APPOINTMENT	DATE OF SEPARATION
TRANTHAM, Byron E. Administrative Computer Support Specialist	FT	3–21–88	11–17–89
TURNER, Jacqueline Y. Computer Specialist	FT	10–09–88	12–02–88
TYLER, Sandra B. Procurement Assistant	FT	10–08–87	6–01–90
VECCHIO, Nancy Secretary—New York	FT	4–27–87	8–26–88
VOLK (PAGE), Mary C. Paralegal	FT	4–06–87	9–22–89
WASHINGTON, Denise E. Documents Specialist/Paralegal	FT	8–12–91	8–04–93
WIEGHART, James G.			
Press Officer	FT	7–20–87	7–31–89
Consultant	WAE	7–31–89	8–04–93
WIGFALL, Carolyn S. Secretary	FT	4–14–87	7–08–88
WINDLEY, Patricia L. Secretary	FT	2–21–89	9–29–89
WISE, Gail Alexander			
Assistant Public Affairs	WAE	1–26–87	5–21–87
Consultant	WAE	5–21–87	1–27–89
WITTEN, Witzel E. Messenger	FT	3–26–87	3–03–88
WITUCKI, Ruth A.			
Receptionist	FT	6–22–87	12–29–87
Press Assistant	FT	12–29–87	1–12–90
Deputy Press Officer	FT	1–12–90	
YATES, Angelo K. Receptionist	FT	4–20–87	6–26–90
ZELENKO, Barbara S. Paralegal	FT	1–08–87	12–26–92

Appendix B
Appointment and Mandate of Independent Counsel

United States Court of Appeals
for The District of Columbia Circuit

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT
INDEPENDENT COUNSEL DIVISION

FILED DEC 04 1986
GEORGE A. FISHER
CLERK

Application of the Attorney General)
Pursuant to 28 U.S.C. §§592(c)(1)) No. 86-6
for the Appointment of an Independent)
Counsel Regarding Iranian Arms)
Shipments and Diversion of Funds)

In accordance with the Independent Counsel provisions of the Ethics in Government Act, 28 U.S.C. §§592(c)(1), the Attorney General of the United States hereby applies for the appointment of an independent counsel to investigate whether violations of federal criminal law were committed by Lieutenant Colonel Oliver L. North, other United States Government officials, or other individuals acting in concert with Lieutenant Colonel North or with other United States Government officials, from in or around January 1985 (the exact date being unknown) to the present, in connection with the sale or shipment of military arms to Iran and the transfer or diversion of funds realized in connection with such sale or shipment.

Information received by the Attorney General

In late November 1986, the Attorney General received information which, upon further inquiry and analysis, he has deemed sufficient to constitute grounds to investigate whether Lieutenant Colonel North, other United States Government officials, or other individuals acting in concert with Lieutenant Colonel North or other United States Government officials, violated federal criminal law at any point during 1985-1986 in connection with the sale or shipment of military

arms to Iran, and the transfer or diversion of funds realized in connection with such sale or shipment.

After an initial review of the above-described information by the Department of Justice, the Attorney General has determined pursuant to 28 U.S.C. §591(c) and the criteria contained therein that insofar as the information pertains to persons not covered by the Independent Counsel provisions of the Ethics in Government Act, it is appropriate under the statute and in the national public interest for this matter to be investigated by an independent counsel.

The Attorney General has determined also that a complete investigation of all information in this matter will in all likelihood require the issuance of subpoenas, consideration of granting immunity to certain individuals, and the exercise of other customary prosecutorial powers. In conducting preliminary investigations pursuant to the Independent Counsel provisions of the Ethics in Government Act, however, the Attorney General is not free to exercise such powers. 28 U.S.C. §592(a)(2). In addition, the investigation will require the obtaining of testimony and documents from foreign governments and individuals, as well as from a number of witnesses in various parts of the United States. These circumstances lead the Attorney General to conclude that further investigation is necessary, and that it is accordingly appropriate and in the national interest to seek the appointment of an independent counsel as promptly as possible.

Jurisdiction and selection of independent counsel

Pursuant to 28 U.S.C. §592(d)(1), which requires this application to "contain sufficient information to assist the division of the court to select a[n] independent counsel and to define that independent counsel's prosecutorial jurisdiction," the Attorney General proposes that the independent counsel be granted jurisdiction to investigate whether violations of U.S. federal criminal law were committed by Lieutenant Colonel Oliver L. North, other United States Government officials, or other individuals acting in concert with Lieutenant Colonel North or with other United States Government officials, whether or not covered by the Independent Counsel provisions of the Ethics in Government Act, from in or around January 1985 (the exact date being unknown) to the present, in connection with the sale or shipment of military arms to Iran and the transfer or diversion of funds realized in connection with such sale or shipment. The independent counsel should have jurisdiction sufficiently broad to investigate and prosecute any and all violations of U.S. federal criminal law which his or her investigation may establish in this matter, and any related matters over which the independent counsel may request or accept jurisdiction pursuant to 28 U.S.C. §594(e).

The questions which will need to be resolved by the independent counsel are of unusual sensitivity, complexity, and importance to the nation. Their resolution will demand an

appreciation of complex issues and principles in the areas of international relations, national security and defense, intelligence, counterterrorism, foreign aid, and foreign military sales, as well as a familiarity with the manner of execution of American foreign policy, the organization of the intelligence community, and procedures relating to classification of information, privileges, and authorizations. It is respectfully suggested that an attorney with substantial knowledge and experience in the above areas will be best able to discharge the duties incumbent upon the independent counsel. As in past instances in which an independent counsel has been appointed, the Department of Justice stands ready to share with the independent counsel, if one is appointed, the information and evidence developed through the Department's analysis and inquiry into this matter.

Respectfully submitted,

Edwin Meese III

EDWIN MEESE III
Attorney General
of the United States

United States Court of Appeals
for The District of Columbia Circuit

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
INDEPENDENT COUNSEL DIVISION

FILED DEC 04 1986

GEORGE A. FISHER
CLERK

Application of the Attorney General Pursuant to 28 U.S.C. §592(c)(1) for the Appointment of an Independent Counsel Regarding Iranian Arms Shipments and Diversion of Funds

No. 86-6

MOTION OF THE ATTORNEY GENERAL
PURSUANT TO 28 U.S.C. §592(d)(2)
FOR LEAVE TO DISCLOSE APPLICATION

Pursuant to 28 U.S.C. §592(d)(2), I hereby seek leave of the Division to disclose the contents of the "Application of the Attorney General Pursuant to 28 U.S.C. §592(c)(1) for the Appointment of an Independent Counsel to Investigate Iranian Arms Shipments and Diversion of Funds" filed with this Court on December 4, 1986. The allegations underlying this application have been reported widely by the news media. In these circumstances, it is in the public interest for the Court to grant leave pursuant to 28 U.S.C. §592(d)(2) to permit public disclosure of the contents of the application submitted to this Court regarding these allegations.

Respectfully submitted,

Edwin Meese III

EDWIN MEESE III
Attorney General

Dated: December 4, 1986

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

...e United States Court of Appeals
...r The District of Columbia Circuit

Division for the Purpose of
Appointing Independent Counsels

FILED DEC 19 1986

GEORGE A. FISHER
CLERK

Ethics in Government Act of 1978, as Amended

In re: Oliver L. North, et al. Division No. 86-6

Before: MacKinnon, Presiding, Morgan and Mansfield, Senior Circuit Judges

Upon consideration of the application of the Attorney General dated December 4, 1986, pursuant to 28 U.S.C. § 592(c)(1) for the appointment of an Independent Counsel to investigate and, if warranted, to prosecute alleged violations of federal criminal laws by Lieutenant Colonel Oliver L. North, other United States Government officials, or other individuals acting in concert with Lieutenant Colonel North or with other United States Government officials, from in or around January 1985 (the exact date being unknown) to the present, in connection with the sale or shipment of military arms to Iran and the transfer or diversion of funds realized in connection with such sale or shipment; it is hereby

ORDERED, by the Court, in accordance with the authority vested in it by 28 U.S.C. § 593(b) that Lawrence E. Walsh, with offices at 1800 Mid-American Tower, Oklahoma City, Oklahoma, be and he is hereby appointed Independent Counsel with jurisdiction to investigate to the maximum extent authorized by Title 28 U.S.C. § 594, whether any person or group of persons described in 28 U.S.C. § 591, including Lieutenant Colonel Oliver L. North, other United States Government officials, or other individuals or organizations acting in concert with Lt. Col. North, or with other United States Government officials, has committed a violation of any federal criminal law, as referred to in 28 U.S.C. § 591, relating in any way to

(1) the direct or indirect sale, shipment, or transfer since in or about 1984 down to the present, of military arms, materiel, or funds to the Government of Iran, officials of that government, persons, organizations or entities connected with or purporting to represent that government, or persons located in Iran;

(2) the direct or indirect sale, shipment, or transfer of military arms, materiel or funds to any government, entity, or person acting, or purporting to act as an intermediary in any transaction above referred to in section (1);

(3) the financing or funding of any direct or indirect sale, shipment or transfer referred to in section (1) or (2);

(4) the diversion of the proceeds from any transaction described in section (1) or (2) to or for any person, organization, foreign government, or any faction or body of insurgents in any foreign country, including, but not limited to Nicaragua;

(5) the provision or coordination of support for persons or entities engaged as military insurgents in armed conflict with the Government of Nicaragua since 1984; and it is further

ORDERED, by the Court, that the Independent Counsel shall have jurisdiction and authority to investigate other allegations or evidence of violation of any federal criminal law by Oliver L. North, and any person or entity heretofore referred to, developed during the Independent Counsel's investigation referred to above, and connected with or arising out of that investigation, and to seek indictments and to prosecute any persons or entities involved in any of the foregoing events or transactions who are reasonably believed to have committed a violation of any federal criminal law (other than a violation constituting a Class B or C misdemeanor, or an infraction, or a petty offense) arising out of such events, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any criminal offense; and it is further

ORDERED, that the Independent Counsel shall have prosecutorial jurisdiction to initiate and conduct prosecutions in any court of competent jurisdiction for any violation of 28 U.S.C. § 1826, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of the federal criminal laws, in connection with the investigation authorized by this order, and shall have all the powers and authority provided by the Ethics in Government Act of 1978, as amended, and specifically by 28 U.S.C. § 594 (appended hereto).

Per Curiam
For the Court:

George A. Fisher
Clerk

§ 594. Authority and duties of an independent counsel

(a) Notwithstanding any other provision of law, an independent counsel appointed under this chapter shall have, with respect to all matters in such independent counsel's prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include—

(1) conducting proceedings before grand juries and other investigations;

(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such independent counsel deems necessary;

(3) appealing any decision of a court in any case or proceeding in which such independent counsel participates in an official capacity;

(4) reviewing all documentary evidence available from any source;

(5) determining whether to contest the assertion of any testimonial privilege;

(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1954, and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General;

(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case in the name of the United States; and

(10) consulting with the United States Attorney for the district in which the violation was alleged to have occurred.

(b) An independent counsel appointed under this chapter shall receive compensation at a per diem rate equal to the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5.

(c) For the purposes of carrying out the duties of the office of independent counsel, an independent counsel shall have power to appoint, fix the compensation, and assign the duties, of such employees as such independent counsel deems necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate provided for GS–18 of the General Schedule under section 5332 of title 5.

(d) An independent counsel may request assistance from the Department of Justice, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such independent counsel's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such independent counsel's duties.

(e) An independent counsel may ask the Attorney General or the division of the court to refer matters related to the independent counsel's prosecutorial jurisdiction. An independent counsel may accept referral of a matter by the Attorney General, if the matter relates to a matter within such independent counsel's prosecutorial jurisdiction as established by the division of the court. If such a referral is accepted, the independent counsel shall notify the division of the court.

(f) An independent counsel shall, except where not possible, comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws.

(g) The independent counsel shall have full authority to dismiss matters within his prosecutorial jurisdiction without conducting an investigation or at any subsequent time prior to prosecution if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

Ethics in Government Act of 1978, as Amended

FILED DEC 19 1986

GEORGE A. FISHER
CLERK

In re: Oliver L. North, et al.

Division No. 86-6

Order Granting Leave
to Disclose Appointment of
Independent Counsel

Before: MacKinnon, Presiding, Morgan and Mansfield, Senior Circuit Judges

It is hereby ordered in the public interest that the Clerk of Court is granted leave to disclose publicly the order appointing independent counsel in the above entitled cause.

Per Curiam
For the Court:

George A. Fisher
Clerk

CHAPTER VI—OFFICES OF INDEPENDENT COUNSEL, DEPARTMENT OF JUSTICE

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PART 600—GENERAL POWERS OF INDEPENDENT COUNSEL

Sec.

600.1 Authority and duties of an Independent Counsel.
600.2 Reporting and congressional oversight.
600.3 Removal of an Independent Counsel; termination of office.
600.4 Relationship with components of the Department of Justice.
600.5 Savings provision; severability.

AUTHORITY: 28 U.S.C. 509, 510, and 515; 5 U.S.C. 301; Article II of the U.S. Constitution.

SOURCE: 52 FR 7271, Mar. 10, 1987, unless otherwise noted.

§ 600.1 Authority and duties of an Independent Counsel.

(a) An Office of Independent Counsel shall be under the direction of an Independent Counsel appointed by the Attorney General. An Independent Counsel shall have, with respect to all matters in his prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18 of the U.S. Code. Such investigative and prosecutorial functions and powers shall include—

(1) Conducting proceedings before grand juries and other investigations;

(2) Participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such Independent Counsel deems necessary;

(3) Appealing any decision of a court in any case or proceeding in which such Independent Counsel participates in an official capacity;

(4) Reviewing all documentary evidence available from any source;

(5) Determining whether to contest the assertion of any testimonial privilege;

(6) Receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in *in camera* proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

(7) Making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18 of the U.S. Code, exercising the authority vested in a United States or the Attorney General;

(8) Inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1954, and the regulations issued thereunder, exercising the powers vested in a U.S. Attorney or the Attorney General; and

(9) Initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing information, and handling all aspects of any case in the name of the United States; and

(10) Consulting with the U.S. Attorney for the district in which the violation was alleged to have occurred.

(b) An Independent Counsel appointed under this chapter shall receive compensation at a per diem rate equal to the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5 of the U.S. Code. This subsection shall not be construed to authorize the payment of any compensation in addition to that paid under subsection (b) of section 594 of title 28 of the U.S. Code.

(c) For the purposes of carrying out the duties of the Office of Independent Counsel, an Independent Counsel shall have power to appoint, fix the compensation, and assign the duties, of such employees as the Independent Counsel deems necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate provided for GS–18 of the General Schedule under section 5332 of title 5 of the U.S. Code.

This subsection shall not be construed to authorize the payment of any compensation in addition to that paid under subsection (c) of section 594 of title 28 of the U.S. Code.

(d) An Independent Counsel may request assistance from the Department of Justice, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within the Independent Counsel's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform the Independent Counsel's duties.

(e) An Independent Counsel may ask the Attorney General to refer matters related to the Independent Counsel's prosecutorial jurisdiction. An Independent Counsel may accept referral of a matter by the Attorney General, if the matter relates to a matter within the Independent Counsel's prosecutorial jurisdiction as established by this chapter. If such a referral is accepted, an Independent Counsel shall notify the division of the U.S. Court of Appeals for the District of Columbia referred to in section 49 of title 28 of the U.S. Code, if such court exists at that time.

(f) An Independent Counsel shall, except where not possible, comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws.

(g) An Independent Counsel shall have full authority to dismiss matters within his prosecutorial jurisdiction without conducting an investigation or at any subsequent time prior to prosecution if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

§ 600.2 Reporting and congressional oversight.

(a) An Independent Counsel appointed under this chapter may make public from time to time, and shall send to the Congress statements or reports on the activities of the Independent Counsel. These statements and reports shall contain such information as the Independent Counsel deems appropriate.

(b)(1) In addition to any reports made under paragraph (a) of this section, and before the termination of the Independent Counsel's office under this chapter, such Independent Counsel shall submit to the division of the U.S. Court of Appeals for the District of Columbia referred to in section 49 of title 28 of the U.S. Code, if such court exists at that time, a report under this section.

(2) A report under this subsection shall set forth fully and completely a description of the work of the Independent Counsel, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of the Independent Counsel which was not prosecuted.

(3) Unless prohibited by applicable law, an Independent Counsel may release to the Congress, the public, or to any appropriate person, such portions of a report made under this subsection as he deems appropriate.

(c) An Independent Counsel shall advise the House of Representatives of any substantial and credible information which such Independent Counsel receives that may constitute grounds for an impeachment. Nothing in this chapter shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

(d) Nothing in this chapter shall prevent the appropriate committees of the Congress from exercising oversight jurisdiction with respect to the official conduct of any Independent Counsel appointed under this chapter, and such Independent Counsel shall have the duty to cooperate with the exercise of such oversight jurisdiction.

§ 600.3 Removal of an Independent Counsel; termination of office.

(a)(1) An Independent Counsel appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for good cause, physical disability, mental incapacity, or any other condition that substantially im-

pairs the performance of the Independent Counsel's duties.

(2) If an Independent Counsel is removed from office, the Attorney General shall promptly submit to the division of the U.S. Court of Appeals for the District of Columbia referred to in section 49 of title 28 of the U.S. Code, if such court exists at that time, and to the Committees on the Judiciary of the Senate and the House of Representatives, a report specifying the facts found and the ultimate grounds for such removal. The Attorney General will not object to the making available of the report to the public by the Committees or the division of the Court.

(3) To the extent otherwise permitted by law, an Independent Counsel so removed may obtain judicial review of the removal in a civil action commenced before the division of the U.S. Court of Appeals for the District of Columbia referred to in section 49 of title 28 of the U.S. Code, if such court exists at that time, or any court of competent jurisdiction and, if such removal was based on error of law or fact, may obtain reinstatement or other appropriate relief; provided that an Independent Counsel originally appointed by court order shall have such rights of review as provided by said order and by section 596(a)(3) of title 28 of the U.S. Code.

(b) An office of Independent Counsel shall terminate when (1) the Independent Counsel notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of the Independent Counsel or accepted by such Independent Counsel under § 600.1(e) of this chapter, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions and (2) the Independent Counsel files a report in full compliance with § 600.2(b) of this chapter.

§ 600.4 Relationship with components of the Department of Justice.

(a) Whenever a matter is in the prosecutorial jurisdiction of an Independent Counsel or has been accepted by an Independent Counsel under § 600.1(e) of this chapter, the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by § 600.1(d) of this chapter, and except insofar as such Independent Counsel agrees in writing that such investigation or proceedings may be continued by the Department of Justice.

(b) Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which an Independent Counsel participates in an official capacity or any appeal of such a case or proceeding.

§ 600.5 Savings provision: severability.

(a) Nothing in this chapter is intended to modify or impair any of the provisions of the Ethics in Government Act relating to Independent Counsel (sections 591-598 of title 28 of the U.S. Code), or of any order issued thereunder.

(b) If any provision of the Ethics in Government Act relating to Independent Counsel (sections 591-598 of title 28 of the U.S. Code) or any provision of this chapter is held invalid for any reason, such invalidity shall not affect any other provision of this chapter, it being intended that each provision of this chapter shall be severable from the Act and from each other provision.

PART 601—JURISDICTION OF THE INDEPENDENT COUNSEL: IRAN/CONTRA

AUTHORITY: 28 U.S.C. 509, 510, and 515; 5 U.S.C. 301; Article II of the U.S. Constitution.

§ 601.1 Jurisdiction of the Independent Counsel: Iran/Contra.

(a) *The Independent Counsel.* Iran/Contra has jurisdiction to investigate to the maximum extent authorized by part 600 of this chapter whether any person or group of persons currently described in section 591 of title 28 of the U.S. Code, including Lieutenant

Offices of Independent Counsel, Justice

Colonel Oliver L. North, other United States Government officials, or other individuals or organizations acting in concert with Lt. Col. North, or with other U.S. Government officials, has committed a violation of any federal criminal law, as referred to in section 591 of title 28 of the U.S. Code, relating in any way to:

(1) The direct or indirect sale, shipment, or transfer since in or about 1984 down to the present, of military arms, materiel, or funds to the Government of Iran, officials of that government, or persons, organizations or entities connected with or purporting to represent that government, or persons located in Iran;

(2) The direct or indirect sale, shipment, or transfer of military arms, materiel or funds to any government, entity, or persons acting, or purporting to act as an intermediary in any transaction above referred to in paragraph (a)(1) of this section;

(3) The financing or funding of any direct or indirect sale, shipment or transfer referred to in paragraph (a)(1) or (2) of this section;

(4) The diversion of the proceeds from any transaction described in paragraph (a)(1) or (2) of this section to or for any person, organization, foreign government, or any faction or body of insurgents in any foreign country, including, but not limited to Nicaragua;

(5) The provision or coordination of support for persons or entities engaged as military insurgents in armed conflict with the Government of Nicaragua since 1984.

(b) *The Independent Counsel.* Iran/Contra shall have jurisdiction and authority to investigate other allegations or evidence of violation of any federal criminal law by Oliver L. North, and any person or entity heretofore referred to, developed during the Independent Counsel's investigation referred to above, and connected with or arising out of that investigation, and to seek indictments and to prosecute any persons or entities involved in any of the foregoing events or transactions who are reasonably believed to have committed a violation of any federal criminal law (other than a violation constituting a Class B or C misdemeanor, or an infraction, or a petty offense) arising out of such events, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any criminal offense.

(c) *The Independent Counsel.* Iran/Contra shall have prosecutorial jurisdiction to initiate and conduct prosecutions in any court of competent jurisdiction for any violation of section 1826 of title 28 of the U.S. Code, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of the federal criminal laws, in connection with the investigation authorized by part 600 of this chapter.

[52 FR 7272, March 10, 1987; 52 FR 9241, Mar. 23, 1987]